

Rule 15-533. Diversion.

1 (a) Referral to diversion. In a matter involving less serious misconduct as outlined in
2 subsection (c), upon receipt of an informal complaint and before filing a formal complaint, the
3 respondent may have the option of electing to have the matter referred to diversion, the
4 appropriateness of which will be determined by the chair of the Diversion Committee after
5 consultation with OPC. The option for diversion also may be initiated by OPC or the Ethics and
6 Discipline Committee screening panel. Diversion may require the participation of the respondent
7 in one or more of the following:

8 (a)(1) fee arbitration;

9 (a)(2) mediation;

10 (a)(3) law office management assistance;

11 (a)(4) lawyer or licensed paralegal practitioner assistance programs;

12 (a)(3) law office management assistance;

13 (a)(4) licensed paralegal practitioner assistance programs;

14 (a)(5) psychological and behavioral counseling;

15 (a)(6) monitoring;

16 (a)(7) restitution;

17 (a)(8) continuing legal education programs including, but not limited to, ethics school; or

18 (a)(9) any other program or corrective course of action to address the respondent's conduct.

19 (b) Diversion Committee.

20 (b)(1) With regard to a licensed paralegal practitioner, the Diversion Committee in Lawyer
21 Rule 15-533 shall operate under the provisions of this Rule.

22 (b)(2) Authority and responsibility. The Diversion Committee may negotiate and execute
23 diversion contracts, assign monitoring to a lawyer or limited paralegal practitioner assistance
24 program, determine compliance with the terms of diversion contracts, and determine fulfillment
25 or any material breach of diversion contracts, subject to review under subsection (j)(3) of this
26 rule, and adopt such policies and procedures as may be appropriate to accomplish its duties under
27 this rule. The Diversion Committee shall have authority to establish subcommittees of volunteer
28 attorneys and other professionals for the specific purpose of monitoring the compliance of any
29 limited paralegal practitioner under diversion and reporting compliance to OPC and the
30 Diversion Committee on a regular basis.

31 (c) Less serious misconduct. Conduct which would result in a suspension or delicensure is
32 not considered to be less serious misconduct. Conduct is not ordinarily considered less serious
33 misconduct if any of the following considerations apply:

34 (c)(1) the misconduct involves the misappropriation of client funds;

35 (c)(2) the misconduct results in or is likely to result in substantial prejudice to a client or
36 other person, absent adequate provisions for restitution;

37 (c)(3) the respondent has been sanctioned in the last three years;

38 (c)(4) the misconduct is of the same nature as misconduct for which the respondent has been
39 sanctioned in the last three years;

40 (c)(5) the misconduct involves dishonesty, deceit, fraud, or misrepresentation;

41 (c)(6) the misconduct constitutes a substantial threat of irreparable harm to the public; a
42 felony; or a misdemeanor which reflects adversely on the respondent's honesty, trustworthiness
43 or fitness as a limited paralegal practitioner; or

44 (c)(7) the misconduct is part of a pattern of similar misconduct.

45 (d) Factors for consideration. The Diversion Committee considers the following factors in
46 negotiating and executing the diversion contract:

47 (d)(1) whether the presumptive sanction that would be imposed, in the opinion of OPC or the
48 Diversion Committee, is likely to be no more severe than a public reprimand or private
49 admonition;

50 (d)(2) whether participation in diversion is likely to improve the respondent's future
51 professional conduct and accomplish the goals of legal paralegal practitioner discipline;

52 (d)(3) whether aggravating or mitigating factors exist; and

53 (d)(4) whether diversion was already tried.

54 (e) Notice to complainant. The OPC will notify the complainant, if any, of the proposed
55 decision to refer the respondent to diversion, and the complainant may submit written comments.
56 The complainant will be notified when the complaint is diverted and when the complaint is
57 dismissed. All notices will be sent to the complainant's address of record on file with the OPC.
58 Such decision to divert or dismiss is not appealable.

59 (f) Diversion contract.

60 (f)(1) If the respondent agrees or elects to participate in diversion as provided by this rule, the
61 terms of the diversion shall be set forth in a written contract. If the contract is entered prior to a

62 hearing of a screening panel of the Ethics and Discipline Committee pursuant to Rule 15-510(b),
63 the contract shall be between the respondent and OPC. If diversion is agreed to and entered after
64 a screening panel of the Ethics and Discipline Committee has convened pursuant to Rule 15-
65 510(b), the contract shall be made as part of the decision of that screening panel. OPC will
66 memorialize the contract and decision. If diversion is agreed to and entered after a complaint has
67 been filed pursuant to Rule 15-512, the diversion contract shall be made as part of the ruling and
68 order of the Court. Except as otherwise part of an order of a court, the Diversion Committee shall
69 monitor and supervise the conditions of diversion and the terms of the diversion contract. The
70 contract shall specify the program(s) to which the legal paralegal practitioner shall be diverted,
71 the general purpose of the diversion, the manner in which compliance is to be monitored, and
72 any requirement for payment of restitution or cost. The respondent licensed paralegal
73 practitioner shall bear the burden of drafting and submitting the proposed diversion contract.
74 Respondent may utilize counsel to assist in the negotiation phase of diversion. Respondent may
75 also utilize Bar benefits programs provided by the Bar, such as a lawyer or licensed paralegal
76 practitioner assistance program to assist in developing terms and conditions for the diversion
77 contract appropriate to that respondent's particular situation. Use of a lawyer or licensed
78 paralegal practitioner assistance program to assess appropriate conditions for diversion shall not
79 conflict that entity from providing services under the contract. The terms of each contract shall
80 be specifically tailored to the respondent's individual circumstances. The contract is confidential
81 and its terms shall not be disclosed to other than the parties to the contract.

82 (f)(2) All diversion contracts must contain at least all the following:

83 (f)(2)(A) the signatures of respondent, his or her counsel if any, and the chair of the
84 Diversion Committee;

85 (f)(2)(B) the terms and conditions of the plan for respondent and, the identity, if appropriate,
86 of any service provider, mentor, monitor and/or supervisor and that individual's specific
87 responsibilities. If a professional or service is utilized, and it is necessary to disclose confidential
88 information, respondent must sign a limited conditional waiver of confidentiality permitting the
89 professional or service to make the necessary disclosures in order for the respondent to fulfill his
90 or her duties under the contract;

91 (f)(2)(C) the necessary terms providing for oversight of fulfillment of the contract terms,
92 including provisions for those involved to report any alleged breach of the contract to OPC;

93 (f)(2)(D) the necessary terms providing that respondent will pay all costs incurred in
94 connection with the contract and those costs further specified pursuant to subsection (k) and any
95 costs associated with the complaints to be deferred; and

96 (f)(2)(E) a specific acknowledgement that a material violation of a contract term renders the
97 respondent's participation in diversion voidable by the chair of the Diversion Committee or his
98 or her designee;

99 (f)(3) The contract may be amended on subsequent agreement of respondent and OPC.

100 (f)(4) The chair of the Ethics and Discipline Committee and OPC shall be given copies of
101 every diversion contract entered and signed by the respondent and the Diversion Committee
102 chair.

103 (g) Affidavit supporting diversion. A diversion contract must be supported by the
104 respondent's or the respondent's lawyer's affidavit or declaration as approved by the Diversion
105 Committee setting forth the purpose for diversion and how the specific terms of the diversion
106 contract will address the allegations raised by the complaint. The respondent is not required to
107 admit to the allegations in the complaint upon entering diversion. However, an admission and/or
108 acknowledgement may be relevant and necessary as part of treatment in diversion. Such an
109 admission shall be confidential for treatment purposes, shall not be released to any third party,
110 and shall not be treated as an admission against interest nor used for future prosecution should
111 diversion fail.

112 (h) Status of complaint. After a diversion contract is executed by the respondent, the
113 disciplinary complaint is deferred pending successful completion of the contract.

114 (i) Effect of non-participation in diversion. The respondent has the right to decline to
115 participate in diversion. If the respondent chooses not to participate in diversion, the matter
116 proceeds pursuant to the Rules of Limited Paralegal Practitioner Discipline and Disability.

117 (j) Termination of diversion.

118 (j)(1) Fulfillment of the contract. The contract terminates when the respondent has fulfilled
119 the terms of the contract and gives the Diversion Committee and OPC an affidavit or declaration
120 demonstrating fulfillment. Upon receipt of this affidavit or declaration, the Diversion Committee
121 and OPC must acknowledge receipt and request that the chair of the Ethics and Discipline
122 Committee or his or her designee dismiss any complaint(s) deferred pending successful
123 completion of the contract or notify the respondent that fulfillment of the contract is disputed

124 based on an OPC claim of material breach. The complainant cannot appeal the dismissal.
125 Successful completion of the contract is a bar to any further disciplinary proceedings based on
126 the same allegations and successful completion of diversion shall not constitute a form of
127 discipline.

128 (j)(2) Material breach. A material breach of the contract is cause for termination of the
129 contract. After a material breach, OPC must notify the respondent of the alleged breach and
130 intent to terminate the diversion. Thereafter, disciplinary proceedings may be instituted, resumed
131 or reinstated.

132 (j)(3) Review by the chair. The Diversion Committee may review disputes regarding the
133 alleged material breach of any term of the contract on the request of the respondent or OPC. The
134 request must be filed with the Diversion Committee chair within 15 days of notice to the
135 respondent of the determination for which review is sought. The respondent is entitled to a
136 hearing before the Diversion Committee on any alleged breach to the diversion contract.
137 Determinations under this section are not subject to further review and are not reviewable in any
138 proceeding.

139 (k) Costs. Upon entering diversion, respondent shall pay an initial fee of \$250. During
140 diversion, respondent shall pay a fee of \$50 per month. All such fees are payable to the Bar's
141 general fund. These fees may be waived upon a hardship request, the validity or appropriateness
142 of which shall be determined by the chair of the Diversion Committee or his or her designee.

Effective November 1, 2018