

Diversion Evaluation, Terms, and Costs

The first step in the diversion process is a determination by Disciplinary Counsel that you are eligible for diversion. Once that determination has been made, Disciplinary Counsel will offer diversion to you as an alternative to discipline. If you accept the offer of diversion, you will be referred to the Diversion Administrator, Dr. Dan Crystal, for an evaluation meeting. Dr. Crystal is a clinical psychologist who works in WSBA's Lawyer Services Department. The purpose of the meeting with Dr. Crystal is to evaluate whether diversion will help address the issues that resulted in the filing of the grievance against you and whether you are affirmatively motivated to complete the terms of the diversion.

The Diversion Evaluation Interview

The evaluation interview lasts from 60-90 minutes and takes place at the WSBA's office in Seattle. You do not need to bring anything with you to this interview. If you are represented by counsel, your lawyer *may not* accompany you to this interview.

At the beginning of the interview, you will be asked to sign an Authorization for Disclosure to Office of Disciplinary Counsel. This allows Dr. Crystal to share information, including otherwise confidential information, with Disciplinary Counsel. Other than communications with Disciplinary Counsel, anything you discuss with Dr. Crystal is confidential.

During the evaluation interview, Dr. Crystal will discuss with you the factors that may have played a role in the situation that led to the filing of the grievance. These may or may not have been discussed with Disciplinary Counsel. Possible factors may include: lack of office organization; handling challenging clients; problems managing support staff; workload stress; financial challenges; family/relationship stressors; and depression, anxiety, or substance abuse problems.

The interview will begin with a discussion of the grievance, and move on to how your practice works and basic law office management strategies. The discussion may include questions about what role, if any, personal stress issues played in the situation. The basic requirements of the proposed diversion will be discussed in general terms, although at this stage, the diversion plan is only preliminary. The purpose of this discussion is to identify relevant programs and resources that address the sources of the misconduct; some or all of these may become "terms" of the Diversion Contract.

The Diversion Contract and Diversion Declaration

After the evaluation interview, Dr. Crystal and Disciplinary Counsel will jointly decide on the requirements of your diversion. Disciplinary Counsel will then draft a Diversion Contract containing these terms, as well as a proposed Diversion Declaration. The proposed Diversion Declaration specifies the facts of the misconduct and includes an admission that you violated certain Rules of Professional Conduct. You and your lawyer, if you have one, will have an opportunity to review the proposed Diversion Contract. Although you may suggest changes to these documents, for the most part, the terms of the proposed Diversion Contract and the proposed Diversion Declaration are not negotiable.

After the Diversion Contract is executed, the grievance that was filed against you is diverted from the discipline system. This means that the grievance is held in abeyance for the duration of the period of diversion. During this time, Dr. Crystal will be your main WSBA contact and monitor your compliance with the Diversion Contract. During the diversion period, Dr. Crystal may discuss your progress with you. If there are issues relating to your ability to comply with the Diversion Contract, you should contact Dr. Crystal and discuss them with him.

Diversion Terms and Costs

- Diversion costs \$750. In some cases, installment payments may be arranged. Demonstration of financial hardship can lead to a reduction to \$375. A tax return or equivalent documentation demonstrating income less than three times the federal poverty level must be provided. The determination is based on the number of people in one's family. Thus, for 1 person their salary would need to be less than \$32,490, 2 people < \$43,710, 3 people < \$54,930, 4 people < \$66,150.
- Most contracts are two years in length. In some cases, if all of the terms are completed prior to the end of the term of the contract, the contract may be terminated early. This is an incentive for you to complete the contract terms as quickly as possible.
- Ethics School is a requirement in every diversion. It is held in May and November each year at the WSBA offices in Seattle. The topics addressed are ethics, trust account management, law office management, and work/life balance. Ethics school is a one-day class, from 8:00 am to 4:00 pm, and costs \$150.00. It ordinarily qualifies for 5.5 Continuing Legal Education (CLE) credit hours, and may be applied toward your MCLE requirements.
- Attendance at an additional 15 hours of CLE classes is a requirement in most Diversion Contracts. The credits may be counted toward your MCLE requirement. Your Diversion Contract may require you to attend CLEs on specific topics that are relevant to your situation. You must provide proof of attendance, as described in the Diversion Contract.
- Law office management consultation (LOMAP) may be a requirement of your diversion. Pete Roberts, WSBA's Law Office Management Consultant, charges **\$95 per hour** to visit your office and does not bill for his travel. For those who qualify for hardship in

- their Diversion Contract LOMAP charges \$47.50 per hour. More information about LOMAP is provided below in the section titled "What is LOMAP."
- In some cases, personal issues such as depression, anxiety, substance abuse, or family/relationship problems may adversely affect a lawyer's ability to practice law. In these cases, Dr. Crystal may recommend psychotherapy with an outside psychotherapist to help you deal with these issues. The only information provided to Dr. Crystal by the psychotherapist is confirmation of your attendance at the sessions and whether you appear motivated. All other aspects of the treatment are confidential. The cost of psychotherapy varies.
- Your Diversion Contract may require you to consult with the WSBA's Professional Responsibility Counsel, David Powell. There is no charge for this consultation.
- In situations involving trust account violations, you may be referred to WSBA's auditors. The rate for auditor services is \$95.00 per hour.
- Your Diversion Contract may require you to pay restitution to an injured party. You should make payment directly to the party identified in your Diversion Contract, and provide a copy of the payment to Dr. Crystal.
- You may find that you have other ideas about what would help you improve your law practice. Please let either Dr. Crystal or Disciplinary Counsel know about these. We are open to your suggestions.

Upon completion of the Diversion Contract, you must execute a declaration stating that you have fulfilled all of the requirements of the Diversion Contract. If you have fulfilled all of the requirements of the Diversion Contract, Disciplinary Counsel will dismiss the grievance filed against you upon receipt of this declaration. The grievant cannot appeal the dismissal of the grievance. If you do not fulfill the requirements of the Diversion Contract, the diversion may be terminated for material breach and the discipline process is reinstated.

We recognize that having a grievance filed against you in the lawyer disciplinary process has an emotional impact on you. Diversion offers you an opportunity to deal with the causes of the misconduct and improve your law practice. By following through with reasonable requirements, your professional reputation and your license will not be affected. If you have any questions, Dr. Crystal can be reached at 206-727-8267 or at danc@wsba.org.

WHAT IS LOMAP?

A Law Office Management Assistance Program (LOMAP) consultation may be required by your Diversion Contract. LOMAP assists lawyers in developing and implementing better office procedures, systems, and practices. Pete Roberts, the LOMAP practice management advisor, who is not a lawyer, has been involved with the program for ten years and has assisted hundreds of members in many practice areas. The confidential services provided within the diversion context are identical to the confidential services provided within a self-referral context. Only the reporting is different.

LOMAP advice covers all aspects of your law practice, including ways to reorganize the physical layout of your office, tips for using Outlook; using a networked calendar on the web; using a new matter log; learning how to end telephone conversations politely; analyzing your financial situation; learning how to deal with clients and manage client expectations; using a matter closing letter; fee agreement guidelines; keeping track of the number of open matters; organizing electronic files; using PDF files; improving staff communication; and time management ideas.

If your Diversion Contract requires you to participate in LOMAP, the first step will be the completion of a self-audit checklist. The self-audit consists of questions concerning the procedures currently used in your office. After the self-audit has been completed, you will be required to make an appointment for the LOMAP advisor to visit your office, whether it is in a traditional office setting or at home or in any other setting. You also will be asked to prepare an inventory of current legal matters, including the status of each.

After the meeting, you will receive a report describing the changes to be implemented in your practice and a requirement that you follow up with the LOMAP advisor in four to six weeks. In some cases, additional follow-up reports and possible additional visits to your office may be required.

You will be charged \$95 per hour for LOMAP services. Typically, between four and eight hours of LOMAP time is required. There is no charge for travel time or expenses. LOMAP charges must be paid in full before your Diversion Contract is considered completed.

LOMAP is not a "rescue mission" and no prior assumptions or judgments have been made about the level of your needs. Being open to changes in how you run your office is essential to the success of your diversion. LOMAP participants consistently state that LOMAP services are the most valuable part of the diversion and that the assistance is greatly appreciated.

LOMAP provides confidential on-point input for a better law practice.