

## NOTICE TO THE BAR

### **EXPANSION OF AVAILABILITY OF AGREEMENT IN LIEU OF DISCIPLINE ("DIVERSION") FOR MINOR ATTORNEY MISCONDUCT – AMENDMENTS TO RULE 1:20-3(i)(2)(B)(i)**

The Supreme Court has amended Rule 1:20-3(i)(2)(B)(i) ("Agreements in Lieu of Discipline"). That Rule affords attorneys who are found to have committed minor misconduct the opportunity to address that misconduct through the non-disciplinary and confidential mechanism of an Agreement in Lieu of Discipline, also known as "diversion."

As amended, the Rule requires the Office of Attorney Ethics Director to consider diversion in all cases involving a finding of minor unethical conduct. In addition, the Rule as amended allows individuals to enter the diversion program after the issuance of a formal disciplinary complaint in appropriate circumstances.

Expansion of the existing diversion program serves both primary purposes of the attorney disciplinary system: "to protect the public and preserve public confidence in the bar." In re Wigenton, 210 N.J. 95, 102 (2012).

The Court's attached May 11, 2023 Order is effective immediately.

Questions on this notice should be directed to the Supreme Court Clerk's Office at (609) 815-2955.

  
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Glenn A. Grant  
Administrative Director of the Courts

Dated: May 12, 2023

**SUPREME COURT OF NEW JERSEY**

It is ORDERED that the attached amendments to Rule 1:20-3 (“District Ethics Committees; Investigations”) of the Rules Governing the Courts of the State of New Jersey are adopted to be effective immediately.

For the Court,



Chief Justice

Dated: May 11, 2023

Rule 1:20-3 - District Ethics Committees; Investigations

- (a) Disciplinary Districts. ... no change.
- (b) Appointments. ... no change.
- (c) Officers; Organization. ... no change.
- (d) Office. ... no change.
- (e) Screening; Docketing. ... no change.
- (f) Related Pending Litigation. ... no change.
- (g) Investigation. ... no change.
- (h) Dismissal and Appeal; Administrative Dismissal. ... no change.
- (i) Determination of Unethical Conduct.
  - (1) Generally. ... no change
  - (2) Minor Unethical Conduct.

(A) Defined. Minor unethical conduct is conduct, which, if proved, would not warrant a sanction greater than a public admonition. Unethical conduct shall not be considered minor if any of the following considerations apply: (i) the unethical conduct involves the knowing misappropriation of funds; (ii) the unethical conduct resulted in or is likely to result in substantial prejudice to a client or other person and restitution has not been made; (iii) the respondent has been disciplined in the previous five years; (iv) the unethical conduct involves dishonesty, fraud or deceit; (v) or the unethical conduct constitutes a crime as defined by the New Jersey Code of Criminal Justice (N.J.S.A. 2C:1- 1, et seq.). Classification of unethical conduct as minor unethical conduct shall be in the sole discretion of the Director.

(B) Agreements in Lieu of Discipline.

(i) If, as a result of investigation, the chair concludes that minor unethical conduct has occurred, the chair [may] shall request that the Director,

or [his] the Director's designee, divert the matter and approve an agreement in lieu of discipline. Such request shall be accompanied by any initial grievance, the respondent's response, an investigative report, the written agreement signed by the respondent, and a letter to any grievant enclosing a copy of the agreement. The letter shall give ten days' notice to the grievant that the Director is being asked to approve the disposition and that any comments must be sent to the Director within that time. Every effort must be made to consider diversion before the filing of a complaint; however, in appropriate circumstances, diversion [Diversion shall not] may be available subsequent to the filing of a complaint. Consistent with Rule 1:20-2, the Director may initiate and authorize diversion absent prior request by the chair.

(ii) There shall be no appeal from the Director's decision.

(iii) An agreement in lieu of discipline may contain an agreement to meet, within a specified period (usually no more than six months), stated conditions addressed, to the extent practicable, to the remediation of the cause of the unethical conduct. Such conditions may include, but are not limited to, reimbursement of fees or costs, completion of legal work, participation in alcohol or drug rehabilitation program, psychological counseling or satisfactory completion of a course of study and such other programs as are developed. If approved, the Director shall monitor the terms of agreement. If the respondent fulfills the terms, the matter shall be dismissed.

(C) Other Process. If an attorney declines to agree to divert a matter to administrative disposition under subparagraph (B), or if the Director determines, as a matter of exclusive discretion, that the attorney does not qualify for diversion or has failed to comply with the terms of the diversion agreement, the matter shall proceed in accordance with subparagraph (i)(3)(A) of these rules.

(3) Unethical Conduct. ... no change.

(j) Incapacity. ... no change.

Note: Former Rule redesignated as Rule 1:20-4 January 31, 1984 to be effective February 15, 1984. Source: Former Rule 1:20-2 adopted February 23, 1978, to be effective April 1, 1978; paragraphs (a), (h), (l) and (m) amended January 17, 1979, which were superseded on March 2, 1979, to be effective

April 1, 1979; and paragraphs (n) and (o) restored on March 22, 1979, to be effective April 1, 1979; subparagraph (l)(3) deleted and new paragraph (p) adopted June 19, 1981, to be effective immediately; paragraphs (c), (h), (j) and (l)(1)(i) amended July 16, 1981, to be effective September 14, 1981; Rule redesignated as Rule 1:20-3; paragraphs (a) through (e) amended; paragraphs (f), (g) and part of (k) deleted; paragraphs (h), (i), (j), (k), (l), (m), (n), (o) and (p) amended and redesignated (f), (h), (i), (j), (k), (l), (m), (n) and (o) and new paragraphs (g) and (p) adopted January 31, 1984, to be effective February 15, 1984; paragraphs (f), (g), (h), (i), (l), (n), (o) and (p) amended November 5, 1986, to be effective January 1, 1987; paragraph (e) and (m) amended June 26, 1987 to be effective July 1, 1987; paragraphs (i), (j) and (o) amended November 7, 1988 to be effective January 2, 1989; paragraphs (f) and (i) amended, and paragraph (n)(3) caption and text amended June 29, 1990 to be effective September 4, 1990; paragraph (f) amended July 13, 1994 to be effective September 1, 1994; paragraphs (g) and (n)(2) captions and text amended August 8, 1994, to be effective immediately; paragraphs (a), (b), (c) and (d) amended, paragraphs (e) through (p) deleted and new paragraphs (e) through (j) adopted January 31, 1995 to be effective March 1, 1995; paragraphs (f), (g)(5), and (h) amended July 5, 2000 to be effective September 5, 2000; paragraph (g)(1) amended July 12, 2002 to be effective September 3, 2002; paragraphs (a), (b), (c), (e), (f), (g), (h), (i) (text and caption), and (j) amended July 28, 2004 to be effective September 1, 2004; paragraph (b) amended June 15, 2007 to be effective September 1, 2007; paragraphs (b) and (c) amended July 22, 2014, to be effective September 1, 2014; subparagraph (e)(2)(B) amended May 9, 2019 to be effective immediately; subparagraph (i)(2)(B) amended May 11, 2023 to be effective immediately.