

**CHAPTER 121. SPECIAL PROCEDURES FOR CASES INVOLVING  
SUBSTANCE ABUSE**

Rule	
36.	Petition for Rehabilitative Diversion.
37.	Evaluations.
38.	Diversion Procedure.

**Source**

The provisions of this Chapter 121 adopted March 21, 2003, effective March 22, 2003, 33 Pa.B. 1449, unless otherwise noted.

**Rule 36. Petition for Rehabilitative Diversion.**

(A) When the Board finds probable cause to investigate a Complaint alleging misconduct involving substance abuse, the Board may notify the Judicial Officer of its investigation and provide the Judicial Officer with an opportunity to petition the Board for permission to enter a rehabilitative diversion program acceptable to the Board prior to the filing of formal charges with the Court of Judicial Discipline.

(B) Such petition shall be filed with the Board promptly. Absent Board approval, a petition shall not be considered if filed after the Judicial Officer's response to the Board's Notice of Full Investigation (see Rules of Procedure of the Judicial Conduct Board outlined in Rule 30B).

(C) The petition for rehabilitative diversion shall contain

(1) the Judicial Officer's verified statement that he/she desires to participate in a qualified treatment program;

(2) a release giving Board Counsel access to all information and records bearing on the rehabilitative program, including information concerning the applicant's past substance abuse and treatment, as well as the proposed rehabilitative program;

(3) a stipulation as to facts which are agreed to by the Judicial Officer and Board Counsel relevant to the formal charges; and agreement of the admissibility of such stipulation in any future proceeding before the Court of Judicial Discipline;

(4) a waiver by the Judicial Officer of the right to file pre-trial motions based on grounds then known to the applicant unless specifically modified as exceptions to the waiver; and

(5) the Judicial Officer's consent to submit to testing for drug or alcohol consumption during any probationary period later imposed.

**Rule 37. Evaluations.**

(A) When any Judicial Officer under investigation applies for diversion under Rule 36 on the ground of his or her substance abuse, the Board may require the applicant to submit to such medical evaluations as it deems necessary. The Board

shall appoint one or more healthcare professionals to examine the applicant and report their findings to the Board. A copy of any such report will be shared with the applicant. Failure to submit to examination will be considered by the Board in its disposition of any pending complaint.

(B) All expenses incurred for such evaluations and reports shall be assessed against the Judicial Officer and shall be his or her sole responsibility.

**Rule 38. Diversion Procedure.**

(A) When a Judicial Officer enters a rehabilitation diversion program pursuant to this Chapter, the Board may defer filing formal charges with the Court of Judicial Discipline for a reasonable period of time to permit the completion of the program, provided that the Judicial Officer consents in writing to the release of treatment information and records relating to his or her participation in the program.

(B) When a Judicial Officer satisfactorily completes an approved inpatient rehabilitation program, the Board shall continue the matter for a twelve (12) month probationary period, which may be conditioned on the Officer's continued participation in a recommended recovery program.

(C) If the rehabilitative intervention and the probationary period are deemed by the Board to have been satisfactorily completed, the Board will refrain from filing charges in the Court of Judicial Discipline and will dismiss the Complaint through the letter of counsel procedure outlined in J.C.B.R.P. 31(A)(2).

(D) If the Board determines that the applicant Judicial Officer has abandoned the recovery program, or has violated the terms in any substantial way, the Board may direct the filing of charges before the Court of Judicial Discipline, or take such other action as may be appropriate in the circumstances.

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