

What is Attorney Monitoring? Contractual Probation, or “Diversion”

Though unfortunate, it is a reality that the incidence of issues related to substance use and mental health disorders is disproportionately high among legal professionals, and that such issues sometimes lead to impairment with regard to personal and professional functioning. The Lawyers and Judges Assistance program recognizes that individuals who struggle with such issues of impairment are not “bad” people, but human beings who are suffering from treatable physiological conditions, from which recovery is possible. In the interest of protecting the public and supporting professionalism within the legal profession, the State Bar of Michigan Lawyers and Judges Assistance Program, in cooperation with the Attorney Grievance Commission, has developed the Attorney Monitoring program.

In an effort to support the recovery processes of those attorneys who have found themselves involved with the Attorney Grievance Commission relative to impairment, and to respond to the need for public protection, the LJAP has designed the Attorney Monitoring Contract. The purpose of this contract is to provide a system of accountability and support for the attorney in question, and to provide a mechanism by which the identified attorney’s progress with regard to recovery from said impairment might be closely scrutinized and documented accordingly for the AGC.

In certain instances, monitoring is offered for law students, as well. Students who have past and/or current issues pertaining to substance use and/or mental health that may be cause for close scrutiny by the Character and Fitness Committee can engage in the monitoring process. Once again, Monitoring can provide a means of accountability and support for recovery and serves the dual purpose of documenting recovery progress in a way that the Character and Fitness Committee finds credible.

The Attorney/Student Monitoring Contract should not be confused with a therapeutic treatment plan. Individualized treatment planning will take place within the context of treatment with a designated Treatment provider, who is selected from the LJAP’s list of preferred providers. In the event that an identified attorney/student is already involved in a therapeutic relationship with a clinician, attempts will be made to accommodate continuity of care. The Attorney/Student Monitoring Contract is designed to identify a specific and effective system of support and accountability, and is probationary in nature. Failure to fully comply with the terms of said agreement may result in formal discipline by the law school, Character and Fitness, or AGC, including but not limited to suspension or denial/revocation of licensure to practice law.

Access to the LJAP Monitoring Program

Voluntary: On occasion, individuals who have struggled with issues of impairment and are just embarking in recovery, or have experienced some success in recovery and subsequently relapsed will present to the LJAP program requesting a monitoring contract because they seek the added accountability and support that a monitoring agreement can provide. In such instances, the LJAP will assume the role of the Monitoring Authority.

Self-report to the LJAP in anticipation of AGC contact: An attorney who finds him/her self “in trouble” may contact the LJAP prior to interaction with the AGC. At such time, the identified attorney will be advised of options available to them through the LJAP and the State Bar of Michigan, including MCR 9.114. The attorney may choose to enter into a monitoring contract, and when contacted by the AGC, as outlined by MCR 9.114, may then request diversionary probation via the LJAP contract that is already in place.

Self-report to the LJAP in anticipation of scrutiny by Character and Fitness: A student who finds him/herself “in trouble” may contact the LJAP prior to investigation by the C&F Committee. At such time the identified student will be advised of options available to them through the LJAP Student Services Program. The student may choose to enter into a monitoring contract, their assumed full compliance thus preparing them appropriately and adequately for eventual investigation by the Character and Fitness Committee.

Self-report to AGC as is outlined in the SBOM code of ethics: In the event that an attorney reports to the AGC relative to convictions, which are alcohol/drug related and/or said attorney is identified as chemically dependent, he/she will be advised of MCR 9.114. If the identified attorney’s circumstances match the criteria defined in MCR9.114, he/she may request contractual probation in lieu of formal sanctions. In this event, the AGC may refer the identified attorney to the LJAP for assessment, referral, and monitoring.

Employer Referral: A concerned employer may refer a valued employee who is showing signs of impairment. In such instances the LJAP assumes the role of a neutral third party, and facilitation of the monitoring program enables the employee to seek help and gain recovery, thus protecting his/her employment, contingent on compliance with the monitoring agreement. Additionally, the referring employer can rest assured that the best interests of the employee, the firm and the public are all being attended to. Employer referrals can manifest in improved functioning for the individual, the firm, and the greater legal culture.

Structural Components

Assessment:

Any individual who wishes to enter into an Attorney Monitoring Agreement must first submit to a formal assessment conducted by a qualified member of the LJAP staff. Said assessment will be comprehensive in nature, and is designed to identify possible mental health issues including but not limited to depression, anxiety, substance use and other compulsive disorders. The base cost if this assessment is \$200.00, payable by cash, check, credit card, or money order, at the time that assessment is performed. Urinalysis may also be required, at additional cost to the individual who is seeking monitoring. If an individual has completed an evaluation elsewhere within 90 days of contact with the LJAP, LJAP staff will review said evaluation and determine whether or not this evaluation may be substituted for another completed by LJAP staff. In this event, LJAP staff will request that a proper consent form be signed allowing LJAP staff to communicate with the previous evaluator before such determination is made.

Reporting:

Each participating attorney will coordinate a monitoring schedule with his/her case monitor. It is the responsibility of the participating attorney to schedule and keep appointments with LJAP staff and/or Peer Monitors, as stipulated within the monitoring contract. The respective monitor(s) will document participant’s attendance and progress accordingly, and these monthly reports will become a part of quarterly reports, which will be furnished by LJAP staff to identified Monitoring Authorities. It is a good idea for individuals to schedule the next appointment with monitor(s) before the conclusion of the current monthly meeting.

Early Recovery Group

Participating attorneys who have met DSM-IV diagnostic criteria for substance use disorders may be required to participate in a substance abuse specific Early Recovery Group.(ERG).Appropriateness for inclusion in the group will be determined by LJAP staff, on a case-by case basis, but in general, attorneys eligible for participation will have completed primary treatment for substance use disorders prior to entry to the ERG. The ERG will be facilitated by a therapist from the LJAP’s approved provider list, and participants’ length of stay in the ERG will be determined with input from the ERG facilitator, in concert with reports from other sources of support identified within a participant’s Attorney Monitoring Agreement.

UDS/Urine Drug Screening and/or Breathalyzer Tests

Through out the course of monitoring, participants may be required to submit to random UDS and/or breathalyzer tests. Proper releases allowing for the exchange of information between the LJAP and the identified testing agency will be obtained, and all test result will be provided directly to the LJAP. It is the responsibility of the participating attorney to ensure that all necessary information for registration is provided to the identified testing agent and to arrange an appropriate avenue of payment for testing, within 24 hours of signing the monitoring agreement, unless otherwise specified. The identified testing agent will provide the participating attorney with specific instructions on how, when, and where drops are to be submitted, and all efforts will be made to identify drop sites that are convenient to the participating attorney's place of employment and/or residence. In the event that the participant is going on vacation or leaving town for work or study - related reasons, the LJAP case monitor may decide to excuse the participant from testing for a prescribed period of time, or the identified testing agent. In the event that a participant will be unavailable for normal testing, it his/her responsibility to advise the LJAP case monitor and the testing agent in advance. Vacation and other travel requests should be submitted at least two weeks in advance, whenever possible.

Community Self Help Meeting Attendance

In some instances, participants may be required to attend a minimum number of twelve step meetings of Alcoholics Anonymous and/or Narcotics Anonymous. The number and frequency of these meetings will be determined by the LJAP case monitor and/or approved treatment provider, and such determinations will be made on an individualized basis. In some instances attendance at other community-based group self-help meetings may be required.

Duplication of Services

In the event that a participant is already on criminal probation and/or involved in a therapeutic relationship, individual circumstances will be reviewed by the LJAP case manager and efforts may be made to 'dovetail' the terms of the contract with those supports and systems of accountability which are already in place. This decision will be made at the discretion of the LJAP team. It is NOT the role of the LJAP to advocate for the participant with regard to criminal matters.

Fees

The base fees for LJAP monitoring services are as follows:

Attorney: \$100.00 per month

Bar Applicant: \$50.00 per month

Participants are responsible for any expenses incurred for treatment and/or urinalysis/breathalyzer tests.

Definition of Terms

Addictionist: An Addictionist is a physician who specializes in Addictions Medicine. Addictionists may come from other clinical specialty areas such as internal medicine, psychiatry, etc. An addictionist will diagnose and treat addiction withdrawal as well as the many physical complications that may accompany the condition of addiction. The Addictionist is an extremely valuable resource in terms of medication management for individuals who are recovering from the condition of addiction, and can work in concert with other physicians and health care providers to augment recovery and assist in education and support around relapse prevention.

Attorney Monitor /Case Manager: LJAP staff person who initiates and implements contract, and oversees participant compliance with monitoring.

Peer Monitor: A lawyer or judge from the LJAP volunteer network who is assigned to assist in monitoring participant compliance with monitoring contract.

Conditional Employment Contract: a monitoring contract initiated by a participant's employer, inherent in which is a stipulation designating that continued participant employment is contingent upon successful completion of the monitoring contract.

Discipline Order: An order from the Attorney Discipline Board, Attorney Grievance Commission, or the Supreme Court, directing attorney participation and compliance with an Attorney Monitoring Contract administered by the LJAP.

Lawyers and Judges Assistance Program: The State Bar of Michigan Lawyers and Judges Assistance Program.

Approved Treatment Provider: A provider of mental health care licensed or certified under the laws of the State of Michigan, including a psychiatrist, psychologist, social worker, professional counselor, or addictions counselor. Said providers have been selected by the LJAP on the basis of credentialing, reputation, and possession of the skill level requisite to work with specialized populations.

Monitoring Authority: The referring entity (i.e. Attorney Grievance Commission, Attorney Discipline Board, Employer, State Board of Law Examiners, Character and Fitness Committee of the State Bar, Judicial Tenure Commission, the court) directing the participant to execute and comply with requirements of a monitoring contract.

Monitored Attorney/Participant: An attorney or bar applicant who has volunteered or is under the directive of an outside Monitoring Authority to comply with the terms of a monitoring contract, and has executed said contract.