

1 **Rule 14-510. Prosecution and appeals.**

2 (a) Informal complaint of unprofessional conduct.

3 (a)(1) Filing. A disciplinary proceeding may be initiated against any member of the
4 Bar by any person, OPC counsel or the Committee, by filing with the Bar, in writing, an
5 informal complaint in ordinary, plain and concise language setting forth the acts or
6 omissions claimed to constitute unprofessional conduct. Upon filing, an informal
7 complaint shall be processed in accordance with this article.

8 (a)(2) Form of informal complaint. The informal complaint need not be in any
9 particular form or style and may be by letter or other informal writing, although a form
10 may be provided by the OPC to standardize the informal complaint format. It is
11 unnecessary that the informal complaint recite disciplinary rules, ethical canons or a
12 prayer requesting specific disciplinary action. The informal complaint shall be signed by
13 the complainant and shall set forth the complainant's address, and may list the names
14 and addresses of other witnesses. The informal complaint shall be notarized and
15 contain a verification attesting to the accuracy of the information contained in the
16 complaint. In accordance with Rule 14-504(b), complaints filed by OPC are not required
17 to contain a verification. The substance of the informal complaint shall prevail over the
18 form.

19 (a)(3) Initial investigation. Upon the filing of an informal complaint, OPC counsel
20 shall conduct a preliminary investigation to ascertain whether the informal complaint is
21 sufficiently clear as to its allegations. If it is not, OPC counsel shall seek additional facts
22 from the complainant; additional facts shall also be submitted in writing and signed by
23 the complainant.

24 (a)(4) Notice of informal complaint. Upon completion of the preliminary investigation,
25 OPC counsel shall determine whether the informal complaint can be resolved in the
26 public interest, the respondent's interest and the complainant's interest. OPC counsel
27 and/or the screening panel may use their efforts to resolve the informal complaint. If the
28 informal complaint cannot be so resolved or if it sets forth facts which, by their very
29 nature, should be brought before the screening panel, or if good cause otherwise exists
30 to bring the matter before the screening panel, OPC counsel shall cause to be served a
31 NOIC by regular mail upon the respondent at the address reflected in the records of the

32 Bar. The NOIC shall have attached a true copy of the signed informal complaint against
33 the respondent and shall identify with particularity the possible violation(s) of the Rules
34 of Professional Conduct raised by the informal complaint as preliminarily determined by
35 OPC counsel.

36 (a)(5) Answer to informal complaint. Within 20 days after service of the NOIC on the
37 respondent, the respondent shall file with OPC counsel a written and signed answer
38 setting forth in full an explanation of the facts surrounding the informal complaint,
39 together with all defenses and responses to the claims of possible misconduct. For
40 good cause shown, OPC counsel may extend the time for the filing of an answer by the
41 respondent not to exceed an additional 30 days. Upon the answer having been filed or if
42 the respondent fails to respond, OPC counsel shall refer the case to a screening panel
43 for investigation, consideration and determination. OPC counsel shall forward a copy of
44 the answer to the complainant.

45 (a)(6) Dismissal of informal complaint. An informal complaint which, upon
46 consideration of all factors, is determined by OPC counsel to be frivolous, unintelligible,
47 barred by the statute of limitations, more adequately addressed in another forum,
48 unsupported by fact or which does not raise probable cause of any unprofessional
49 conduct, or which OPC declines to prosecute may be dismissed by OPC counsel
50 without hearing by a screening panel. OPC counsel shall notify the complainant of such
51 dismissal stating the reasons therefor. The complainant may appeal a dismissal by OPC
52 counsel to the Committee chair within 15 days after notification of the dismissal is
53 mailed. Upon appeal, the Committee chair shall conduct a de novo review of the file,
54 either affirm the dismissal or require OPC counsel to prepare a NOIC, and set the
55 matter for hearing by a screening panel. In the event of the chair's recusal, the chair
56 shall appoint the vice chair or one of the screening panel chairs to review and determine
57 the appeal.

58 (b) Proceedings before Committee and screening panels.

59 (b)(1) Review and investigation. A screening panel shall review all informal
60 complaints referred to it by OPC counsel, including all the facts developed by the
61 informal complaint, answer, investigation and hearing, and the recommendations of
62 OPC counsel.

63 (b)(2) Respondent's appearance. Before any action is taken that may result in the
64 recommendation of an admonition or public reprimand or the filing of a formal complaint,
65 the screening panel shall, upon at least 30 days' notice, afford the respondent an
66 opportunity to appear before the screening panel. Respondent and any witnesses called
67 by the respondent may testify, and respondent may present oral argument with respect
68 to the informal complaint. Respondent may also submit a written brief to the screening
69 panel at least 10 days prior to the hearing, which shall not exceed 10 pages in length
70 unless permission for enlargement is extended by the chair or the chair's delegate for
71 good cause shown. A copy of the brief shall be forwarded by OPC counsel to the
72 complainant.

73 (b)(3) Complainant's appearance. A complainant shall have the right to appear
74 before the screening panel personally and, together with any witnesses called by the
75 complainant, may testify.

76 (b)(4) Right to hear evidence; cross-examination. The complainant and the
77 respondent shall have the right to be present during the presentation of the evidence
78 unless excluded by the screening panel chair for good cause shown. Respondent may
79 be represented by counsel, and complainant may be represented by counsel or some
80 other representative. Either complainant or respondent may seek responses from the
81 other party at the hearing by posing questions or areas of inquiry to be asked by the
82 panel chair. Direct cross-examination will ordinarily not be permitted except, upon
83 request, when the panel chair deems that it would materially assist the panel in its
84 deliberations.

85 (b)(5) Hearing Record. The proceedings of any hearing before a screening panel
86 under this subsection (b) shall be recorded at a level of audio quality that permits an
87 accurate transcription of the proceedings. Pursuant to its function as secretary to the
88 Committee under Rule 14-503(h)(1), OPC shall be responsible for the assembly of the
89 complete record of the proceedings, to be delivered to the chair of the Committee upon
90 the rendering of the panel's recommendation to the Committee chair. The record of the
91 proceedings before the panel shall be preserved for not less than one year following
92 delivery of the panel's recommendation to the chair of the Committee and for such

93 additional period as any further proceedings on the matter are pending or might be
94 instituted under this section.

95 (b)(6) Screening panel determination. Upon review of all the facts developed by the
96 informal complaint, answer, investigation and hearing, the screening panel shall make
97 one of the following determinations:

98 (b)(6)(A) The preponderance of evidence presented does not establish that the
99 respondent was engaged in unprofessional conduct, in which case the informal
100 complaint shall be dismissed. OPC counsel shall promptly give notice of such dismissal
101 by regular mail to the complainant and the respondent. A letter of caution may also be
102 issued with the dismissal. The letter shall be signed by OPC counsel or the screening
103 panel chair and shall serve as a guide for the future conduct of the respondent. The
104 complainant shall also be confidentially notified of the caution;

105 (b)(6)(B) The informal complaint shall be referred to the Diversion Committee to be
106 processed in accordance with the provisions of Rule 14-533;

107 (b)(6)(C) The informal complaint shall be referred to the Committee chair with an
108 accompanying screening panel recommendation that the respondent be admonished;

109 (b)(6)(D) The informal complaint shall be referred to the Committee chair with an
110 accompanying screening panel recommendation that the respondent receive a public
111 reprimand; or

112 (b)(6)(E) A formal complaint shall be filed against the respondent pursuant to Rule
113 14-511.

114 (b)(7) Recommendation of admonition or public reprimand. A screening panel
115 recommendation that the respondent should be disciplined under subsection (b)(6)(C)
116 or (b)(6)(D) shall be in writing and shall state the substance and nature of the informal
117 complaint and defenses and the basis upon which the screening panel has concluded,
118 by a preponderance of the evidence, that the respondent should be admonished or
119 publicly reprimanded. A copy of such screening panel recommendation shall be
120 delivered to the Committee chair and a copy served upon the respondent.

121 (b)(8) Determination of appropriate sanction. In determining an appropriate sanction
122 and only after having found unethical conduct, the screening panel may consider any

123 admonitions or greater discipline imposed upon the respondent within the five years
124 immediately preceding the alleged offense.

125 (b)(9) Continuance of disciplinary proceedings. A disciplinary proceeding may be
126 held in abeyance by the Committee prior to the filing of a formal complaint when the
127 allegations or the informal complaint contain matters of substantial similarity to the
128 material allegations of pending criminal or civil litigation in which the respondent is
129 involved.

130 (c) Exceptions to admonitions and public reprimands. Within 30 days after service of
131 the recommendation of an admonition or public reprimand on respondent, respondent
132 may file with the Committee chair exceptions to the recommendation and may request a
133 hearing. The exceptions shall include a memorandum, not to exceed 20 pages, stating
134 the grounds for review, the relief requested and the bases in law or in fact for the
135 exceptions.

136 (d) Procedure on exceptions.

137 (d)(1) Hearing not requested. If no hearing is requested, the Committee chair will
138 review the record compiled before the screening panel.

139 (d)(2) Hearing requested. If a request for a hearing is made, the Committee chair or
140 a screening panel chair designated by the Committee chair shall serve as the
141 Exceptions Officer and hear the matter in an expeditious manner, with OPC counsel
142 and the respondent having the opportunity to be present and give an oral presentation.
143 The complainant need not appear personally. However, upon motion to the Exceptions
144 Officer and for good cause shown, respondent may seek to augment the record before
145 the screening panel or the original brief on exceptions, including:

146 (d)(2)(A) A request to call complainant as an adverse witness for purposes of cross-
147 examination if complainant was not subject to direct cross-examination before the
148 screening panel, and

149 (d)(2)(B) A request for time to obtain a transcript of the screening panel proceedings
150 to support respondent's exceptions, the cost of such transcript to be borne by
151 respondent. If a transcript is requested, OPC will provide the Committee chair with the
152 transcript as transcribed by a court reporting service, together with an affidavit
153 establishing the chain of custody of the record.

154 (d)(3) Burden of proof. A respondent who files exceptions under this section (d) shall
155 have the burden of showing that the recommendation of the screening panel is
156 unsupported by substantial evidence or is arbitrary, capricious, legally insufficient or
157 otherwise clearly erroneous.(d)(4) OPC response. The Exceptions Officer may request
158 a written response from OPC to exceptions filed by respondent.

159 (d)(5) Record on exceptions. The proceedings of any hearing on exceptions under
160 this subsection (d) shall be recorded at a level of audio quality that permits an accurate
161 transcription of the proceedings.

162 (e) Final Committee disposition. Either upon the completion of the exceptions
163 procedure under subsection (d) or if no exceptions have been filed by respondent under
164 subsection (c), the Committee chair shall issue a final, written determination that either
165 sustains, dismisses, or modifies the disciplinary recommendation of the screening
166 panel. A modification of the screening panel's recommendation of discipline may
167 not:(e)(1) Be more severe than the original recommendation of the screening panel; nor

168 (e)(2) Require OPC to file a formal complaint under Rule 14-511.

169 (f) Appeal of a final Committee determination of admonition or public reprimand.

170 (f)(1) Within 30 days after service by OPC of a final, written determination of an
171 admonition or a public reprimand in a matter for which exceptions have been filed by
172 respondent under subsection (c), respondent may file a request for review with the
173 Supreme Court seeking reversal or modification of the final determination by the
174 Committee. [Dissemination of disciplinary information pursuant to Rules 14-504\(b\)\(13\) or](#)
175 [14-516 shall be automatically stayed during the period within which a request for review](#)
176 [may be filed under this subsection. If a timely request for review is filed, the stay shall](#)
177 [remain in place pending resolution by the Supreme Court unless the Court otherwise](#)
178 [orders.](#)

179 (f)(2) A request for review under this subsection (f) will be subject to the procedures
180 set forth in Title III of the Utah Rules of Appellate Procedure.

181 (f)(3) A party requesting a transcription of the record below shall bear the costs.
182 OPC will provide the Court with the transcript as transcribed by a court reporting
183 service, together with an affidavit establishing the chain of custody of the record.

184 (f)(4) The Supreme Court shall conduct a review of the matter on the record.

185 (f)(5) Respondent shall have the burden of demonstrating that the Committee action
186 was:

187 (f)(5)(A) Based on a determination of fact that is not supported by substantial
188 evidence when viewed in light of the whole record before the Court;

189 (f)(5)(B) An abuse of discretion;

190 (f)(5)(C) Arbitrary or capricious; or

191 (f)(5)(D) Contrary to Articles 5 and 6 of Chapter 14 of the Rules of Professional
192 Practice of the Supreme Court.

193 (g) General procedures.

194 (g)(1) Testimony. All testimony given before a screening panel or the Exceptions
195 Officer shall be under oath.

196 (g)(2) Service. To the extent applicable, service or filing of documents under this
197 Rule is to be made in accordance with Utah Rules of Civil Procedure 5(b)(1), 5(d) and
198 6(a).

199 (g)(3) Form of Documents. Documents submitted under this Rule shall conform to
200 the requirements of Rules 27(a) and 27(b) of the Utah Rules of Appellate Procedure,
201 except it is not required to bind documents along the left margin.

202 [Advisory Committee Notes](#)

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