

In the Supreme Court of the State of Utah

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In re: Proposed Amendment of Rule 14-515 of
the Rules Governing the Utah State Bar

Order

It is hereby ordered that the proposed amendment of Rule 14-515 of the Rules Governing the Utah State Bar is adopted and, under Rule 11-105, promulgated effective November 25, 2015. The rule is subject to change after the comment period.

For the Court:

11-30-15
Date



Matthew B. Durrant
Chief Justice

Rule 14-515.

1 **Rule 14-515. Access to disciplinary information.**

2 (a) Confidentiality. Prior to the filing of a formal complaint or the issuance of a public reprimand
3 pursuant to Rule 14-510 in a discipline matter, the proceeding is confidential, except that the pendency,
4 subject matter, and status of an investigation may be disclosed by OPC counsel if the proceeding is
5 based upon allegations that have been disseminated through the mass media, or include either the
6 conviction of a crime or reciprocal public discipline. The proceeding shall not be deemed confidential to
7 the extent:

8 (a)(1) the respondent has given an express written waiver of confidentiality;

9 (a)(2) there is a need to notify another person or organization, including the Bar's Lawyer's Fund for
10 Client Protection, in order to protect the public, the administration of justice, or the legal profession; or

11 (a)(3) the information is required in a subsequent lawyer sanctions hearing;

12 (a)(4) a referral is made to the Professionalism Counseling Board pursuant to Rule 14-510 (a)(4) or
13 (b)(6)(C). In the event of such a referral, OPC counsel, members of the Committee and of any screening
14 panel, and members of the Professionalism Counseling Board may share all information between and
15 among them with the expectation that such information will in all other respects be subject to applicable
16 confidentiality rules or exceptions.

17 (b) Public proceedings. Upon the filing of a formal complaint in a discipline matter, the filing of a
18 petition for reinstatement, or the filing of a motion or petition for interim suspension, the proceeding is
19 public, except as provided in paragraph (d) below.

20 (c) Proceedings alleging disability. Proceedings for transfer to or from disability status are
21 confidential. All orders transferring a respondent to or from disability status are public.

22 (d) Protective order. In order to protect the interest of a complainant, witness, third party, or
23 respondent, the district court may, upon application of any person and for good cause shown, issue a
24 protective order prohibiting the disclosure of specific information and direct that the proceedings be
25 conducted so as to implement the order, including requiring that the hearing be conducted in such a way
26 as to preserve the confidentiality of the information that is the subject of the application.

27 (e) Request for nonpublic information. Nonpublic information shall be confidential, other than as
28 authorized for disclosure under paragraph (a), unless:

29 (e)(1) the request for information is made by the Board, any Bar committee, a committee or
30 consultant appointed by the Supreme Court or the Board to review OPC operations, or the executive
31 director, and is required in the furtherance of their duties; or

32 (e)(2) the request for information is approved by OPC counsel and there is compliance with the
33 provisions of paragraphs (f) and (g) of this rule.

34 (f) Notice to the respondent. Except as provided in paragraph (g), if the Committee decides to provide
35 nonpublic information requested pursuant to paragraph (e), and if the respondent has not signed an
36 express written waiver permitting the party requesting the information to obtain the nonpublic information,
37 the respondent shall be notified in writing at the respondent's last known designated mailing address as

Rule 14-515.

38 shown by Bar records of that information which has been requested and by whom, together with a copy of
39 the information proposed to be released. The notice shall advise the respondent that the information shall
40 be released at the end of 21 days following mailing of the notice unless the respondent objects to the
41 disclosure. If the respondent timely objects to the disclosure, the information shall remain confidential
42 unless the requesting party obtains a court order authorizing its release.

43 (g) Release without notice. If ~~an otherwise authorized~~ a requesting party as outlined in paragraph
44 (e)(2) has not obtained an express written waiver from the respondent to obtain nonpublic information,
45 and requests that the information be released without giving notice to the respondent, the requesting
46 party shall certify that:

47 (g)(1) the request is made in furtherance of an ongoing investigation into misconduct by the
48 respondent;

49 (g)(2) the information is essential to that investigation; and

50 (g)(3) disclosure of the existence of the investigation to the respondent would seriously prejudice that
51 investigation.

52 (h) OPC counsel can disclose nonpublic information without notice to the respondent if:

53 (h)(1) disclosure is made in furtherance of an ongoing OPC investigation into misconduct by the
54 respondent; and

55 (h)(2) the information that is sought through disclosure is essential to that investigation.

56 (i) **Duty of participants.** All participants in a proceeding under these rules shall conduct themselves
57 so as to maintain confidentiality. Except as authorized by other statutes or rules, persons receiving private
58 records under paragraph (e) will not provide access to the records to anyone else.

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