IN THE SUPREME COURT OF THE STATE OF UTAH

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UTAH APPELLATE COURTS

JAN 2 2 2015

In re: Proposed Amendments
to Rule 14-510
of the RULES GOVERNING THE UTAH STATE BAR in the
SUPREME COURT RULES OF PROFESSIONAL PRACTICE

ORDER

IT IS HEREBY ORDERED that the proposed amendments to Rule 14-510 of the Rules Governing the Utah State Bar in the Supreme Court Rules of Professional Practice are adopted and promulgated effective May 1, 2015.

FOR THE COURT:

1-22-15
Date

Matthew B. Durrant
Chief Justice

Rule 14-510. Prosecution and appeals.

(a) Informal complaint of unprofessional conduct.

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

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

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

(a)(4) Potential Referral to Professionalism Counseling Board. In connection with any conduct that comes to their attention, whether by means of an informal complaint, a preliminary investigation, or any other means, OPC counsel may, at its discretion, refer any matter to the Professionalism Counseling Board established pursuant to the Supreme Court's Standing Order No. 7. Such referral may be in addition to or in lieu of any further proceedings related to the subject matter of the referral. Such referral should be in writing and, at the discretion of OPC counsel, may include any or all information included in an informal complaint or additional facts submitted by a complainant.

(a)(5) Notice of informal complaint. Upon completion of the preliminary investigation, OPC counsel shall determine whether the informal complaint can be resolved in the public interest, the respondent's interest and the complainant's interest. OPC counsel and/or the screening panel may use their efforts to resolve the informal complaint. If the informal complaint cannot be so resolved or if it sets forth facts which, by their very nature, should be brought before the screening panel, or if good cause otherwise exists to bring the matter before the screening panel, OPC counsel shall cause to be served a NOIC by regular mail upon the respondent at the address reflected in the records of the Bar. The NOIC shall have attached a true copy of the signed informal complaint against the respondent and shall identify with particularity the possible violation(s) of the Rules of Professional Conduct raised by the informal complaint as preliminarily determined by OPC counsel.

37 (a)(6) Answer to informal complaint. Within 20 days after service of the NOIC on the respondent, the
38 respondent shall file with OPC counsel a written and signed answer setting forth in full an explanation of
39 the facts surrounding the informal complaint, together with all defenses and responses to the claims of
40 possible misconduct. For good cause shown, OPC counsel may extend the time for the filing of an
41 answer by the 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 for investigation,
43 consideration and determination or recommendation. OPC counsel shall forward a copy of the answer to
44 the complainant.
45 (a)(7) Dismissal of informal complaint. An informal complaint which, upon consideration of all factors,
46 is determined by OPC counsel to be frivolous, unintelligible, barred by the statute of limitations, more
47 adequately addressed in another forum, unsupported by fact or which does not raise probable cause of
48 any unprofessional conduct, or which OPC declines to prosecute may be dismissed by OPC counsel
49 without hearing by a screening panel. OPC counsel shall notify the complainant of such dismissal stating
50 the reasons therefor. The complainant may appeal a dismissal by OPC counsel to the Committee chair
51 within 15 days after notification of the dismissal is mailed. Upon appeal, the Committee chair shall
52 conduct a de novo review of the file, either affirm the dismissal or require OPC counsel to prepare a
53 NOIC, and set the matter for hearing by a screening panel. In the event of the chair's recusal, the chair
54 shall appoint the vice chair or one of the screening panel chairs to review and determine the appeal.
55 (b) Proceedings before Committee and screening panels.
56 (b)(1) Review and investigation. A screening panel shall review all informal complaints referred to it
57 by OPC counsel, including all the facts developed by the informal complaint, answer, investigation and
58 hearing, and the recommendations of OPC counsel. In cases where a judicial officer has not addressed
59 or reported a respondent's alleged misconduct, the screening panel should not consider this inaction to
60 be evidence either that misconduct has occurred or has not occurred.
61 (b)(2) Respondent's appearance. Before any action is taken that may result in the recommendation of
62 an admonition or public reprimand or the filing of a formal complaint, the screening panel shall, upon at
63 least 30 days' notice, afford the respondent an opportunity to appear before the screening panel.
64 Respondent and any witnesses called by the respondent may testify, and respondent may present oral
65 argument with respect to the informal complaint. Respondent may also submit a written brief to the
66 screening panel at least 10 days prior to the hearing, which shall not exceed 10 pages in length unless
67 permission for enlargement is extended by the chair or the chair's delegate for good cause shown. A copy
68 of the brief shall be forwarded by OPC counsel to the complainant.
69 (b)(3) Complainant's appearance. A complainant shall have the right to appear before the screening
70 panel personally and, together with any witnesses called by the complainant, may testify.
71 (b)(4) Right to hear evidence; cross-examination. The complainant and the respondent shall have the
72 right to be present during the presentation of the evidence unless excluded by the screening panel chair
73 for good cause shown. Respondent may be represented by counsel, and complainant may be

74 represented by counsel or some other representative. Either complainant or respondent may seek
75 responses from the other party at the hearing by posing questions or areas of inquiry to be asked by the
76 panel chair. Direct cross-examination will ordinarily not be permitted except, upon request, when the
77 panel chair deems that it would materially assist the panel in its deliberations.
78 (b)(5) Hearing Record. The proceedings of any hearing before a screening panel under this
79 subsection (b) shall be recorded at a level of audio quality that permits an accurate transcription of the
80 proceedings. Pursuant to its function as secretary to the Committee under Rule 14-503(h)(1), OPC shall
81 be responsible for the assembly of the complete record of the proceedings, to be delivered to the chair of
82 the Committee upon the rendering of the panel's determination or recommendation to the Committee
83 chair. The record of the proceedings before the panel shall be preserved for not less than one year
84 following delivery of the panel's determination or recommendation to the chair of the Committee and for
85 such additional period as any further proceedings on the matter are pending or might be instituted under
86 this section.
87 (b)(6) Screening panel determination or recommendation. Upon review of all the facts developed by
88 the informal complaint, answer, investigation and hearing, the screening panel shall make one of the
89 following determinations or recommendations:
90 (b)(6)(A) The preponderance of evidence presented does not establish that the respondent was
91 engaged in unprofessional conduct, in which case the informal complaint shall be dismissed. OPC
92 counsel shall promptly give notice of such dismissal by regular mail to the complainant and the
93 respondent. A letter of caution may also be issued with the dismissal. The letter shall be signed by OPC
94 counsel or the screening panel chair and shall serve as a guide for the future conduct of the respondent.
95 The complainant shall also be confidentially notified of the caution;
96 (b)(6)(B) The informal complaint shall be referred to the Diversion Committee for diversion. In this
97 case, the specific material terms of the Diversion Contract agreed to by the respondent are to be
98 recorded as a part of the screening panel record, along with any comments by the complainant. The
99 screening panel shall have no further involvement in processing the diversion. The Diversion Committee
100 shall process the diversion in accordance with Rule 14-533.
101 (b)(6)(C) The informal complaint shall be referred to the Professionalism Counseling Board
102 established pursuant to the Supreme Court's Standing Order No. 7;
103 (b)(6)(D) The informal complaint shall be referred to the Committee chair with an accompanying
104 screening panel recommendation that the respondent be admonished;
105 (b)(6)(E) The informal complaint shall be referred to the Committee chair with an accompanying
106 screening panel recommendation that the respondent receive a public reprimand; or
107 (b)(6)(F) A formal complaint shall be filed against the respondent pursuant to Rule 14-511.
108 (b)(7) Recommendation of admonition or public reprimand. A screening panel recommendation that
109 the respondent should be disciplined under subsection (b)(6)(~~C~~D) or (b)(6)(~~D~~E) shall be in writing and
110 shall state the substance and nature of the informal complaint and defenses and the basis upon which the

111 screening panel has concluded, by a preponderance of the evidence, that the respondent should be
112 admonished or publicly reprimanded. A copy of such screening panel recommendation shall be delivered
113 to the Committee chair and a copy served upon the respondent.
114 (b)(8) Determination of appropriate sanction. In determining an appropriate sanction and only after
115 having found unethical conduct, the screening panel may consider any admonitions or greater discipline
116 imposed upon the respondent within the five years immediately preceding the alleged offense.
117 (b)(9) Continuance of disciplinary proceedings. A disciplinary proceeding may be held in abeyance by
118 the Committee prior to the filing of a formal complaint when the allegations or the informal complaint
119 contain matters of substantial similarity to the material allegations of pending criminal or civil litigation in
120 which the respondent is involved.
121 (c) Exceptions to screening panel determinations and recommendations. Within 30 days after the
122 date of the determination of the screening panel of a dismissal, dismissal with letter of caution, a referral
123 to the Diversion Committee, a referral to the Professionalism Counseling Board, or the recommendation
124 of an admonition, or the recommendation of a public reprimand, OPC may file with the Committee chair
125 exceptions to the determination or recommendation and may request a hearing. The respondent shall
126 then have 30 days within which to make a response, and the response shall include respondent's
127 exceptions, if any, to a recommendation of an admonition or reprimand. Within 30 days after service by
128 OPC of the recommendation of an admonition or public reprimand on respondent, the respondent may
129 file with the Committee chair exceptions to the recommendation and may request a hearing. No exception
130 may be filed to a screening panel determination that a formal complaint shall be filed against a
131 respondent pursuant to Rule 14-511. All exceptions shall include a memorandum, not to exceed 20
132 pages, stating the grounds for review, the relief requested and the bases in law or in fact for the
133 exceptions.
134 (d) Procedure on exceptions.
135 (d)(1) Hearing not requested. If no hearing is requested, the Committee chair will review the record
136 compiled before the screening panel.
137 (d)(2) Hearing requested. If a request for a hearing is made, the Committee chair or a screening
138 panel chair designated by the Committee chair shall serve as the Exceptions Officer and hear the matter
139 in an expeditious manner, with OPC counsel and the respondent having the opportunity to be present and
140 give an oral presentation. The complainant need not appear personally. However, upon motion to the
141 Exceptions Officer and for good cause shown, OPC or respondent may seek to augment the record
142 before the screening panel or the original brief on exceptions, including:
143 (d)(2)(A) A request to call complainant as an adverse witness for purposes of cross-examination if
144 complainant was not subject to direct cross-examination before the screening panel, and
145 (d)(2)(B) A request for time to obtain a transcript of the screening panel proceedings to support
146 respondent's <u>or OPC's</u> exceptions, the cost of such transcript to be borne by the party requesting it. If a

147 transcript is requested, OPC will provide the Committee chair with the transcript as transcribed by a court
148 reporting service, together with an affidavit establishing the chain of custody of the record.
149 (d)(3) Burden of proof. The party who files exceptions under subsection (c) shall have the burden of
150 showing that the determination or recommendation of the screening panel is unsupported by substantial
151 evidence or is arbitrary, capricious, legally insufficient or otherwise clearly erroneous.
152 (d)(4) Response. The party opposing the exception may file a written response within the time
153 allowed by the Exceptions Officer.
154 (d)(5) Record on exceptions. The proceedings of any hearing on exceptions under this subsection (d)
155 shall be recorded at a level of audio quality that permits an accurate transcription of the proceedings.
156 (e) Final Committee disposition. Either upon the completion of the exceptions procedure under
157 subsection (d) or if no exceptions have been filed under subsection (c), the Committee chair shall issue a
158 final, written determination that either sustains, dismisses, or modifies the determination or
159 recommendation of the screening panel. No final written determination is needed by the Committee chair
160 to a screening panel determination to a dismissal, a dismissal with a letter of caution, ~~or~~ a referral to the
161 Diversion Committee, or a dismissal with referral to the Professionalism Counseling Board, if no exception
162 is filed.
163 (f) Appeal of a final Committee determination.
164 (f)(1) Within 30 days after the date of a final, written determination of the Committee chair under (c),
165 OPC may file a request for review by the Supreme Court seeking reversal or modification of the final
166 determination of the Committee. Within 30 days after service by OPC of a final, written determination of
167 the Committee chair under subsection (c), the respondent may file a request for review with the Supreme
168 Court seeking reversal or modification of the final determination by the Committee. A request for review
169 under this subsection shall only be available in cases where exceptions have been filed under subsection
170 (c). Dissemination of disciplinary information pursuant to Rules 14-504(b)(13) or 14-516 shall be
171 automatically stayed during the period within which a request for review may be filed under this
172 subsection. If a timely request for review is filed, the stay shall remain in place pending resolution by the
173 Supreme Court unless the Court otherwise orders.
174 (f)(2) A request for review under this subsection (f) will be subject to the procedures set forth in Title
175 III of the Utah Rules of Appellate Procedure.
176 (f)(3) A party requesting a transcription of the record below shall bear the costs. OPC will provide the
177 Court with the transcript as transcribed by a court reporting service, together with an affidavit establishing
178 the chain of custody of the record.
179 (f)(4) The Supreme Court shall conduct a review of the matter on the record.
180 (f)(5) The party requesting review shall have the burden of demonstrating that the Committee action
181 was:
182 (f)(5)(A) Based on a determination of fact that is not supported by substantial evidence when viewed
183 in light of the whole record before the Court;

184 (f)(5)(B) An abuse of discretion;
185 (f)(5)(C) Arbitrary or capricious; or
186 (f)(5)(D) Contrary to Articles 5 and 6 of Chapter 14 of the Rules of Professional Practice of the
187 Supreme Court.
188 (g) General procedures.
189 (g)(1) Testimony. All testimony given before a screening panel or the Exceptions Officer shall be
190 under oath.
191 (g)(2) Service. To the extent applicable, service or filing of documents under this Rule is to be made
192 in accordance with Utah Rules of Civil Procedure 5(b)(1), 5(d) and 6(a).
193 (g)(3) Form of Documents. Documents submitted under this Rule shall conform to the requirements of
194 Rules 27(a) and 27(b) of the Utah Rules of Appellate Procedure, except it is not required to bind
195 documents along the left margin.
196 Advisory Committee Notes
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