

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 Bar by any person,  
4 OPC counsel or the Committee, by filing with the Bar, in writing, an informal complaint in ordinary, plain  
5 and concise language setting forth the acts or omissions claimed to constitute unprofessional conduct.  
6 Upon filing, an informal complaint shall be processed in accordance with this article.

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

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

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

27       (a)(5) Notice of informal complaint. Upon completion of the preliminary investigation, OPC counsel  
28 shall determine whether the informal complaint can be resolved in the public interest, the respondent's  
29 interest and the complainant's interest. OPC counsel and/or the screening panel may use their efforts to  
30 resolve the informal complaint. If the informal complaint cannot be so resolved or if it sets forth facts  
31 which, by their very nature, should be brought before the screening panel, or if good cause otherwise  
32 exists to bring the matter before the screening panel, OPC counsel shall cause to be served a NOIC by  
33 regular mail upon the respondent at the address reflected in the records of the Bar. The NOIC shall have  
34 attached a true copy of the signed informal complaint against the respondent and shall identify with  
35 particularity the possible violation(s) of the Rules of Professional Conduct raised by the informal complaint  
36 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)(~~G~~) or (b)(6)(~~D~~) 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 or OPC's 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](#)

197