

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 ~~which that~~ may result in
64 the recommendation of an admonition or public reprimand or the filing of a formal
65 complaint, the screening panel shall, upon at least ~~14 days~~ 21 days' notice, afford the
66 respondent an opportunity to appear before the screening panel. Respondent and
67 ~~testify under oath, together with~~ any witnesses called by the respondent may testify, and
68 respondent may to present ~~an~~ oral argument with respect to the informal complaint. ~~All~~
69 ~~testimony shall be recorded and preserved so long as proceedings are pending, and in~~
70 ~~any event, not less than six months following the hearing. A written brief may also be~~
71 ~~submitted~~ Respondent may also submit a written brief to the screening panel ~~by at~~
72 least 10 days prior to the ~~respondent. The brief hearing, which~~ shall not exceed ~~five~~ 10
73 pages in length unless permission for enlargement is extended by the chair or the
74 chair's delegate for good cause shown. A copy of the brief shall be forwarded by OPC
75 counsel to the complainant.

76 (b)(3) Complainant's appearance. A complainant shall have the right to appear
77 before the screening panel personally and ~~testify under oath~~, together with any
78 witnesses called by the complainant, ~~with respect to the informal complaint or in~~
79 ~~opposition to the matters presented by the respondent. The complainant may be~~
80 ~~represented by counsel or some other representative~~ may testify.

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

90 (b)(5) Hearing Record. The proceedings of any hearing before a screening panel
91 under this subsection (b) shall be recorded at a level of audio quality that permits an
92 accurate transcription of the proceedings. Pursuant to its function as secretary to the
93 Committee under Rule 14-503(h)(1), OPC shall be responsible for the assembly of the

94 complete record of the proceedings, to be delivered to the chair of the Committee upon
95 the rendering of the panel's recommendation to the Committee chair. The record of the
96 proceedings before the panel shall be preserved for not less than one year following
97 delivery of the panel's recommendation to the chair of the Committee and for such
98 additional period as any further proceedings on the matter are pending or might be
99 instituted under this section.

100 (b)(~~56~~) Screening panel determination. Upon review of all the facts developed by the
101 informal complaint, answer, investigation and hearing, the screening panel, ~~in behalf of~~
102 ~~the Committee~~, shall make one of the following determinations:

103 (b)(~~56~~)(A) ~~that the informal complaint does not raise facts in which there is probable~~
104 ~~cause to believe. The preponderance of evidence presented does not establish~~ that the
105 respondent was engaged in unprofessional conduct, in which case, the informal
106 complaint shall be dismissed. OPC counsel shall promptly give notice of such dismissal
107 by regular mail to the complainant and the respondent; ~~or~~ A

108 ~~(b)(5)(B) that a~~ letter of caution may also be issued with the dismissal. The letter
109 shall be signed by OPC counsel or the screening panel chair and shall serve as a guide
110 for the future conduct of the respondent. ~~Thereupon, the informal complaint shall be~~
111 ~~dismissed, with the complainant and the respondent being notified of the dismissal.~~ The
112 complainant shall also be confidentially notified of the caution; ~~or~~

113 ~~(b)(5)(C) that a dismissal may be conditioned upon the performance by the~~
114 ~~respondent of specified conduct which the Committee determines to be warranted by~~
115 ~~the facts and the Rules of Professional Conduct; or~~

116 (b)(~~56~~)(~~DB~~) ~~that~~ The informal complaint shall be referred to the Diversion
117 Committee to be processed in accordance with the provisions of Rule 14-533;

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

120 (b)(6)(D) The informal complaint shall be referred to the Committee chair with an
121 accompanying screening panel recommendation that the respondent ~~be admonished.~~
122 Such receive a public reprimand; or

123 (b)(6)(E) A formal complaint shall be filed against the respondent pursuant to Rule
124 14-511.

125 (b)(7) Recommendation of admonition or public reprimand. A screening panel
126 recommendation that the respondent should be disciplined under subsection (b)(6)(C)
127 or (b)(6)(D) shall be in writing and shall state the substance and nature of the informal
128 complaint and defenses and the basis upon which the screening panel has concluded,
129 by a preponderance of the evidence, that the respondent should be admonishedor
130 publicly reprimanded. A copy of such screening panel recommendation shall be served
131 upon the respondent prior to delivery of the recommendation to the Committee chair.
132 The Committee chair shall enter an order admonishing the respondent if no exception
133 has been filed within ten days of notice of the recommendation being provided to the
134 respondent; or

135 ~~(b)(5)(E) that the informal complaint be referred to the Committee chair with an~~
136 ~~accompanying screening panel recommendation that the respondent receive a public~~
137 ~~reprimand. Such screening panel recommendation shall be in writing and shall state the~~
138 ~~substance and nature of the informal complaint and defenses and the basis upon which~~
139 ~~the screening panel has concluded, by a preponderance of the evidence, that the~~
140 ~~respondent should receive a public reprimand. A copy of such screening panel~~
141 ~~recommendation shall be delivered to the Committee chair and a copy served upon the~~
142 ~~respondent, prior to the delivery of the recommendation to the Committee chair. The~~
143 ~~Committee chair shall enter an order publicly reprimanding the respondent if no~~
144 ~~exception has been filed within ten days of notice of the recommendation being~~
145 ~~provided to the respondent; or~~

146 ~~(b)(5)(F) that a formal complaint be filed against the respondent.~~

147 (b)(68) Determination of appropriate sanction. In determining an appropriate
148 sanction and only after having found unethical conduct, the screening panel may
149 consider any admonitions or greater discipline imposed upon the respondent within the
150 five years immediately preceding the alleged offense.

151 (b)(79) Continuance of disciplinary proceedings. A disciplinary proceeding may be
152 held in abeyance by the Committee prior to the filing of a formal complaint when the
153 allegations or the informal complaint contain matters of substantial similarity to the
154 material allegations of pending criminal or civil litigation in which the respondent is
155 involved.

156 (c) Exceptions to admonitions and public reprimands. Within ~~ten~~30 days after ~~notice~~
157 service of the recommendation of an admonition or public reprimand ~~to the Committee~~
158 chair on respondent, ~~the~~ respondent may file with the Committee chair ~~an exception~~
159 exceptions to the recommendation and may ~~also, if desired,~~ request a hearing. The
160 exceptions shall include a memorandum, not to exceed 20 pages, stating the grounds
161 for review, the relief requested and the bases in law or in fact for the exceptions.

162 (d) Procedure on exceptions.

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

165 (d)(2) Hearing requested. If a request for a hearing is made, the Committee chair, or
166 a screening panel chair designated by the Committee chair, shall ~~proceed to serve as~~
167 the Exceptions Officer and hear the matter in an expeditious manner, with OPC counsel
168 and the respondent having the opportunity to be present. ~~The complainant's testimony~~
169 may be read into the record and give an oral presentation. The complainant need not
170 appear personally, ~~unless called by the respondent.~~ However, upon motion to the
171 Exceptions Officer and for good cause shown, respondent may seek to augment the
172 record before the screening panel or the original brief on exceptions, including:

173 (d)(2)(A) A request to call complainant as an adverse witness for purposes of cross-
174 examination. ~~The respondent if complainant was not subject to direct cross-examination~~
175 before the screening panel, and

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

181 (d)(3) Burden of proof. A respondent who files exceptions under this section (d) shall
182 have the burden ~~of proof~~ of showing that the recommendation of the screening panel is
183 ~~unreasonable,~~ unsupported by substantial evidence, or is arbitrary, capricious, legally
184 insufficient or ~~and~~ otherwise clearly erroneous.

185 (d)(4) OPC response. The Exceptions Officer may request a written response from
186 OPC to exceptions filed by respondent.

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

190 (e) Final Committee disposition. Either upon the completion of the exceptions
191 procedure under subsection (d) or if no exceptions have been filed by respondent under
192 subsection (c), the Committee chair shall issue a final, written determination that either
193 sustains, dismisses, or modifies the disciplinary recommendation of the screening
194 panel. A modification of the screening panel's recommendation of discipline may not:

195 (e)(1) Be more severe than the original recommendation of the screening panel; nor

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

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

198 (f)(1) Within 30 days after service by OPC of a final, written determination of an
199 admonition or a public reprimand in a matter for which exceptions have been filed by
200 respondent under subsection (c), respondent may file a request for review with the
201 Supreme Court seeking reversal or modification of the final determination by the
202 Committee.

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

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

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

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

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

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

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

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

217 (g) General procedures.

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

220 (g)(2) Service. To the extent applicable, service or filing of documents under this
221 Rule is to be made in accordance with Utah Rules of Civil Procedure 5(b)(1), 5(d) and
222 6(a).

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

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