

1 **Rule 14-504. OPC counsel.**

2 (a) Appointment and qualifications. The Board shall appoint a lawyer admitted to
3 practice in Utah to serve as senior counsel. Neither the senior counsel nor any full-time
4 assistant counsel shall engage in the private practice of law for payment.

5 (b) Powers and duties. The senior counsel shall perform all prosecutorial functions
6 and have the following powers and duties, which may be delegated to other staff:

7 (b)(1) screen all information coming to the attention of the OPC to determine
8 whether it is within the jurisdiction of the OPC in that it relates to misconduct by a lawyer
9 or to the incapacity of a lawyer;

10 (b)(2) investigate all information coming to the attention of the OPC which, if true,
11 would be grounds for discipline or transfer to disability status, and investigate all facts
12 pertaining to petitions for reinstatement or readmission;

13 (b)(3) for each matter not covered in Rule 14-510 brought to the attention of the
14 OPC:

15 (b)(3)(A) dismiss;

16 (b)(3)(B) decline to prosecute;

17 (b)(3)(C) refer non-frivolous and substantial informal complaints to the Committee for
18 hearing; or

19 (b)(3)(D) petition to the district court for transfer to disability status;

20 (b)(4) prosecute before the screening panels, the district courts, the Supreme Court,
21 and any other courts, including but not limited to, any court of the United States all
22 disciplinary cases and proceedings for transfer to or from disability status;

23 (b)(5) attend the Character and Fitness Committee proceedings in all cases for
24 readmission, and represent the OPC before the district courts, Supreme Court, and any
25 other courts including, but not limited to, any court of the United States in all cases for
26 reinstatement and readmission;

27 (b)(6) employ or appoint and supervise staff needed for the performance of
28 prosecutorial functions and delegate such responsibilities as may be reasonably
29 necessary to perform prosecutorial functions, including supervising attorneys who
30 provide pro bono services to the Bar, by supervising the practice of respondents
31 who have been placed on probation;

32 (b)(7) notify promptly the complainant, the respondent, and any counsel of record of
33 the disposition of each matter;

34 (b)(8) notify each jurisdiction in which a respondent is admitted of a transfer to
35 disability status or any public discipline imposed in Utah;

36 (b)(9) seek reciprocal discipline where appropriate when informed of any public
37 discipline imposed by another court, another jurisdiction, or a regulatory body having
38 disciplinary jurisdiction;

39 (b)(10) forward a certified copy of the judgment of conviction to the disciplinary
40 agency in each jurisdiction in which a lawyer is admitted when the lawyer is convicted of
41 a crime in Utah which reflects adversely on the lawyer's honesty, trustworthiness or
42 fitness as a lawyer;

43 (b)(11) maintain permanent records of discipline and disability matters subject to any
44 expungement requirements and compile statistics to aid in the administration of the
45 system, including but not limited to, a log of all informal complaints received,
46 investigative files, statistical summaries of rules violated and dispositions, any
47 transcripts of proceedings, and other records as the Supreme Court requires to be
48 maintained;

49 (b)(12) expunge after seven years all records or other evidence of the existence of
50 any informal complaint terminated by dismissal or a declination to prosecute;

51 (b)(12)(A) Notice to respondent. If the respondent was contacted by the OPC
52 concerning the informal complaint, or the OPC otherwise knows that the respondent is
53 aware of the existence of the informal complaint, the respondent shall be given prompt
54 written notice of the expungement.

55 (b)(12)(B) Effect of expungement. After a file has been expunged, any OPC
56 response to an inquiry requiring a reference to the matter shall state that there is no
57 record of such matter. The respondent may answer any inquiry requiring a reference to
58 an expunged matter by stating that no informal complaint was made.

59 (b)(13) provide informal guidance concerning professional conduct to members of
60 the Bar requesting guidance, participate in seminars which will promote ethical conduct
61 by the Bar, formulate diversionary programs, monitor probations, and disseminate
62 disciplinary results to the Bar and the public through the Utah Bar Journal and otherwise

63 as appropriate, maintaining the confidentiality of respondents subject to private
64 discipline; and

65 (b)(14) along with the executive director annually formulate the budget for the OPC
66 and submit the budget to the Board for approval. OPC counsel may petition the
67 Supreme Court for review of modifications to the budget imposed by the Board.

68 (c) Disqualification. In addition to complying with the Rules of Professional Conduct
69 regarding successive government and private employment (Rule 1.11 of the Rules of
70 Professional Conduct), a former OPC counsel shall not personally represent a lawyer
71 following completion of the OPC counsel's service in any proceeding as provided in
72 these rules which former OPC counsel investigated or prosecuted during his or her
73 employment by OPC.

74 (d) Effect of ethics advisory opinions. The OPC shall not prosecute a Utah lawyer for
75 any act that was expressly approved by an ethics advisory opinion that has not been
76 withdrawn at the time of the conduct in question. No court is bound by an ethics
77 opinion's interpretation of the Utah Rules of Professional Conduct.

78 (d)(1) The OPC may at any time request the Bar's Ethics Advisory Opinion
79 Committee to review, modify or withdraw an ethics advisory opinion and if so, any OPC
80 investigation or prosecution suspended pending the final outcome of the request. The
81 Ethics Advisory Opinion Committee may issue a modified opinion, withdraw the opinion
82 or decline to take any action but shall report its action or recommendation to the Board
83 of Bar Commissioners and the Board will take such final action as it deems appropriate.

84 (d)(2) The OPC may also request the Supreme Court to review, affirm, reverse or
85 otherwise modify an ethics advisory opinion.

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