

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

31 [information included in an informal complaint or additional facts submitted by a](#)
32 [complainant.](#)

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

45 (a)(56) Answer to informal complaint. Within 20 days after service of the NOIC on
46 the respondent, the respondent shall file with OPC counsel a written and signed answer
47 setting forth in full an explanation of the facts surrounding the informal complaint,
48 together with all defenses and responses to the claims of possible misconduct. For
49 good cause shown, OPC counsel may extend the time for the filing of an answer by the
50 respondent not to exceed an additional 30 days. Upon the answer having been filed or if
51 the respondent fails to respond, OPC counsel shall refer the case to a screening panel
52 for investigation, consideration and determination. OPC counsel shall forward a copy of
53 the answer to the complainant.

54 (a)(67) Dismissal of informal complaint. An informal complaint which, upon
55 consideration of all factors, is determined by OPC counsel to be frivolous, unintelligible,
56 barred by the statute of limitations, more adequately addressed in another forum,
57 unsupported by fact or which does not raise probable cause of any unprofessional
58 conduct, or which OPC declines to prosecute may be dismissed by OPC counsel
59 without hearing by a screening panel. OPC counsel shall notify the complainant of such
60 dismissal stating the reasons therefor. The complainant may appeal a dismissal by OPC

61 counsel to the Committee chair within 15 days after notification of the dismissal is
62 mailed. Upon appeal, the Committee chair shall conduct a de novo review of the file,
63 either affirm the dismissal or require OPC counsel to prepare a NOIC, and set the
64 matter for hearing by a screening panel. In the event of the chair's recusal, the chair
65 shall appoint the vice chair or one of the screening panel chairs to review and determine
66 the appeal.

67 (b) Proceedings before Committee and screening panels.

68 (b)(1) Review and investigation. A screening panel shall review all informal
69 complaints referred to it by OPC counsel, including all the facts developed by the
70 informal complaint, answer, investigation and hearing, and the recommendations of
71 OPC counsel.

72 (b)(2) Respondent's appearance. Before any action is taken that may result in the
73 recommendation of an admonition or public reprimand or the filing of a formal complaint,
74 the screening panel shall, upon at least 30 days' notice, afford the respondent an
75 opportunity to appear before the screening panel. Respondent and any witnesses called
76 by the respondent may testify, and respondent may present oral argument with respect
77 to the informal complaint. Respondent may also submit a written brief to the screening
78 panel at least 10 days prior to the hearing, which shall not exceed 10 pages in length
79 unless permission for enlargement is extended by the chair or the chair's delegate for
80 good cause shown. A copy of the brief shall be forwarded by OPC counsel to the
81 complainant.

82 (b)(3) Complainant's appearance. A complainant shall have the right to appear
83 before the screening panel personally and, together with any witnesses called by the
84 complainant, may testify.

85 (b)(4) Right to hear evidence; cross-examination. The complainant and the
86 respondent shall have the right to be present during the presentation of the evidence
87 unless excluded by the screening panel chair for good cause shown. Respondent may
88 be represented by counsel, and complainant may be represented by counsel or some
89 other representative. Either complainant or respondent may seek responses from the
90 other party at the hearing by posing questions or areas of inquiry to be asked by the

91 panel chair. Direct cross-examination will ordinarily not be permitted except, upon
92 request, when the panel chair deems that it would materially assist the panel in its
93 deliberations.

94 (b)(5) Hearing Record. The proceedings of any hearing before a screening panel
95 under this subsection (b) shall be recorded at a level of audio quality that permits an
96 accurate transcription of the proceedings. Pursuant to its function as secretary to the
97 Committee under Rule 14-503(h)(1), OPC shall be responsible for the assembly of the
98 complete record of the proceedings, to be delivered to the chair of the Committee upon
99 the rendering of the panel's recommendation to the Committee chair. The record of the
100 proceedings before the panel shall be preserved for not less than one year following
101 delivery of the panel's recommendation to the chair of the Committee and for such
102 additional period as any further proceedings on the matter are pending or might be
103 instituted under this section.

104 (b)(6) Screening panel determination. Upon review of all the facts developed by the
105 informal complaint, answer, investigation and hearing, the screening panel shall make
106 one of the following determinations:

107 (b)(6)(A) The preponderance of evidence presented does not establish that the
108 respondent was engaged in unprofessional conduct, in which case the informal
109 complaint shall be dismissed. OPC counsel shall promptly give notice of such dismissal
110 by regular mail to the complainant and the respondent. A letter of caution may also be
111 issued with the dismissal. The letter shall be signed by OPC counsel or the screening
112 panel chair and shall serve as a guide for the future conduct of the respondent. The
113 complainant shall also be confidentially notified of the caution;

114 (b)(6)(B) The informal complaint shall be referred to the Diversion Committee to be
115 processed in accordance with the provisions of Rule 14-533;

116 (b)(6)(C) [The informal complaint shall be referred to the Professionalism Counseling
117 Board established pursuant to the Supreme Court's Standing Order No. 7;](#)

118 [\(b\)\(6\)\(D\)](#) 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)(DE) The informal complaint shall be referred to the Committee chair with an
121 accompanying screening panel recommendation that the respondent receive a public
122 reprimand; or

123 (b)(6)(EF) 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 admonished or
130 publicly reprimanded. A copy of such screening panel recommendation shall be
131 delivered to the Committee chair and a copy served upon the respondent.

132 (b)(8) Determination of appropriate sanction. In determining an appropriate sanction
133 and only after having found unethical conduct, the screening panel may consider any
134 admonitions or greater discipline imposed upon the respondent within the five years
135 immediately preceding the alleged offense.

136 (b)(9) Continuance of disciplinary proceedings. A disciplinary proceeding may be
137 held in abeyance by the Committee prior to the filing of a formal complaint when the
138 allegations or the informal complaint contain matters of substantial similarity to the
139 material allegations of pending criminal or civil litigation in which the respondent is
140 involved.

141 (c) Exceptions to ~~admonitions and public reprimands~~ screening panel determinations
142 and recommendations. Within 30 days after the date of the determination of the
143 screening panel of a dismissal, dismissal with letter of caution, a referral to the
144 Diversion Committee, a referral to the Professionalism Counseling Board, or the
145 recommendation of a public reprimand, OPC may file with the Committee chair
146 exceptions to the determination or recommendation and may request a hearing. Within
147 30 days after service by OPC of the recommendation of an admonition or public
148 reprimand on respondent, the respondent may file with the Committee chair exceptions
149 to the recommendation and may request a hearing. No exception may be filed to a

150 screening panel determination that a formal complaint shall be filed against a
151 respondent pursuant to Rule 14-511. ~~The~~ All exceptions shall include a memorandum,
152 not to exceed 20 pages, stating the grounds for review, the relief requested and the
153 bases in law or in fact for the exceptions.

154 (d) Procedure on exceptions.

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

157 (d)(2) Hearing requested. If a request for a hearing is made, the Committee chair or
158 a screening panel chair designated by the Committee chair shall serve as the
159 Exceptions Officer and hear the matter in an expeditious manner, with OPC counsel
160 and the respondent having the opportunity to be present and give an oral presentation.
161 The complainant need not appear personally. However, upon motion to the Exceptions
162 Officer and for good cause shown, OPC or respondent may seek to augment the record
163 before the screening panel or the original brief on exceptions, including:

164 (d)(2)(A) A request to call complainant as an adverse witness for purposes of cross-
165 examination if complainant was not subject to direct cross-examination before the
166 screening panel, and

167 (d)(2)(B) A request for time to obtain a transcript of the screening panel proceedings
168 to support respondent's exceptions, the cost of such transcript to be borne by
169 respondent the party requesting it. If a transcript is requested, OPC will provide the
170 Committee chair with the transcript as transcribed by a court reporting service, together
171 with an affidavit establishing the chain of custody of the record.

172 (d)(3) Burden of proof. ~~A respondent who files exceptions under this-~~ The party who
173 files exceptions under subsection (d) shall have the burden of showing that the
174 determination or recommendation of the screening panel is unsupported by substantial
175 evidence or is arbitrary, capricious, legally insufficient or otherwise clearly erroneous.

176 (d)(4) OPC rResponse. ~~The Exceptions Officer-~~ The party opposing the exception
177 may request file a written response ~~from OPC to exceptions filed by respondent within~~
178 the time allowed by the Exceptions Officer.

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

182 (e) Final Committee disposition. Either upon the completion of the exceptions
183 procedure under subsection (d) or if no exceptions have been filed ~~by respondent~~ under
184 subsection (c), the Committee chair shall issue a final, written determination that either
185 sustains, dismisses, or modifies the ~~disciplinary determination or~~ recommendation of
186 the screening panel. No final written determination is needed by the Committee chair to
187 a screening panel determination to a dismissal, a dismissal with a letter of caution, or a
188 referral to the Diversion Committee if no exception is filed. A modification of the
189 screening panel's recommendation of discipline may not:

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

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

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

193 (f)(1) Within 30 days ~~after service by OPC the date~~ of a final, written determination
194 of the Committee chair under (c), OPC may file a request for review by the Supreme
195 Court seeking reversal or modification of the final determination of the Committee.
196 Within 30 days after service by OPC of a final, written determination of the Committee
197 chair under subsection (c), the respondent an admonition or a public reprimand in a
198 matter for which exceptions have been filed by respondent under subsection (c),
199 respondent may file a request for review with the Supreme Court seeking reversal or
200 modification of the final determination by the Committee. A request for review under this
201 subsection shall only be available in cases where exceptions have been filed under
202 subsection (c). Dissemination of disciplinary information pursuant to Rules 14-
203 504(b)(13) or 14-516 shall be automatically stayed during the period within which a
204 request for review may be filed under this subsection. If a timely request for review is
205 filed, the stay shall remain in place pending resolution by the Supreme Court unless the
206 Court otherwise orders.

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

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

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

213 (f)(5) ~~Respondent~~ The party requesting review shall have the burden of
214 demonstrating that the Committee action was:

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

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

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

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

221 (g) General procedures.

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

224 (g)(2) Service. To the extent applicable, service or filing of documents under this
225 Rule is to be made in accordance with Utah Rules of Civil Procedure 5(b)(1), 5(d) and
226 6(a).

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

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