

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  
4 the Bar by any person, OPC counsel or the Committee, by filing with the Bar, in  
5 writing, an informal complaint in ordinary, plain and concise language setting  
6 forth the acts or omissions claimed to constitute unprofessional conduct. Upon  
7 filing, an informal 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  
10 form may be provided by the OPC to standardize the informal complaint format. It  
11 is unnecessary that the informal complaint recite disciplinary rules, ethical  
12 canons or a prayer requesting specific disciplinary action. The informal complaint  
13 shall be signed by the complainant and shall set forth the complainant's address,  
14 and may list the names and addresses of other witnesses. The informal  
15 complaint shall be notarized and contain a verification attesting to the accuracy of  
16 the information contained in the complaint. In accordance with Rule 14-504(b),  
17 complaints filed by OPC are not required to contain a verification. The substance  
18 of the informal complaint shall prevail over the form.

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

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

33       (a)(5) Notice of informal complaint. Upon completion of the preliminary  
34 investigation, OPC counsel shall determine whether the informal complaint can  
35 be resolved in the public interest, the respondent's interest and the complainant's  
36 interest. OPC counsel and/or the screening panel may use their efforts to resolve  
37 the informal complaint. If the informal complaint cannot be so resolved or if it sets  
38 forth facts which, by their very nature, should be brought before the screening  
39 panel, or if good cause otherwise exists to bring the matter before the screening  
40 panel, OPC counsel shall cause to be served a NOIC by regular mail upon the

41 respondent at the address reflected in the records of the Bar. The NOIC shall  
42 have attached a true copy of the signed informal complaint against the  
43 respondent and shall identify with particularity the possible violation(s) of the  
44 Rules of Professional Conduct raised by the informal complaint as preliminarily  
45 determined by OPC counsel.

46 (a)(6) Answer to informal complaint. Within 20 days after service of the NOIC  
47 on the respondent, the respondent shall file with OPC counsel a written and  
48 signed answer setting forth in full an explanation of the facts surrounding the  
49 informal complaint, together with all defenses and responses to the claims of  
50 possible misconduct. For good cause shown, OPC counsel may extend the time  
51 for the filing of an answer by the respondent not to exceed an additional 30 days.  
52 Upon the answer having been filed or if the respondent fails to respond, OPC  
53 counsel shall refer the case to a screening panel for investigation, consideration  
54 and determination or recommendation. OPC counsel shall forward a copy of the  
55 answer to the complainant.

56 (a)(7) Dismissal of informal complaint. An informal complaint which, upon  
57 consideration of all factors, is determined by OPC counsel to be frivolous,  
58 unintelligible, barred by the statute of limitations, more adequately addressed in  
59 another forum, unsupported by fact or which does not raise probable cause of  
60 any unprofessional conduct, or which OPC declines to prosecute may be  
61 dismissed by OPC counsel without hearing by a screening panel. OPC counsel  
62 shall notify the complainant of such dismissal stating the reasons therefor. The  
63 complainant may appeal a dismissal by OPC counsel to the Committee chair  
64 within 15 days after notification of the dismissal is mailed. Upon appeal, the  
65 Committee chair shall conduct a de novo review of the file, either affirm the  
66 dismissal or require OPC counsel to prepare a NOIC, and set the matter for  
67 hearing by a screening panel. In the event of the chair's recusal, the chair shall  
68 appoint the vice chair or one of the screening panel chairs to review and  
69 determine the appeal.

70 (b) Proceedings before Committee and screening panels.

71 (b)(1) Review and investigation. A screening panel shall review all informal  
72 complaints referred to it by OPC counsel, including all the facts developed by the  
73 informal complaint, answer, investigation and hearing, and the recommendations  
74 of OPC counsel. In cases where a judicial officer has not addressed or reported a  
75 respondent's alleged misconduct, the screening panel should not consider this  
76 inaction to be evidence either that misconduct has occurred or has not occurred.

77 (b)(2) Respondent's appearance. Before any action is taken that may result in  
78 the recommendation of an admonition or public reprimand or the filing of a formal  
79 complaint, the screening panel shall, upon at least 30 days' notice, afford the  
80 respondent an opportunity to appear before the screening panel. Respondent  
81 and any witnesses called by the respondent may testify, and respondent may

82 present oral argument with respect to the informal complaint. Respondent may  
83 also submit a written brief to the screening panel at least 10 days prior to the  
84 hearing, which shall not exceed 10 pages in length unless permission for  
85 enlargement is extended by the chair or the chair's delegate for good cause  
86 shown. A copy of the brief shall be forwarded by OPC counsel to the complainant.

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

90 (b)(4) Right to hear evidence; cross-examination. The complainant and the  
91 respondent shall have the right to be present during the presentation of the  
92 evidence unless excluded by the screening panel chair for good cause shown.  
93 Respondent may be represented by counsel, and complainant may be  
94 represented by counsel or some other representative. Either complainant or  
95 respondent may seek responses from the other party at the hearing by posing  
96 questions or areas of inquiry to be asked by the panel chair. Direct cross-  
97 examination will ordinarily not be permitted except, upon request, when the panel  
98 chair deems that it would materially assist the panel in its deliberations.

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

110 (b)(6) Screening panel determination or recommendation. Upon review of all  
111 the facts developed by the informal complaint, answer, investigation and hearing,  
112 the screening panel shall make one of the following determinations or  
113 recommendations:

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

122 (b)(6)(B) The informal complaint shall be referred to the Diversion Committee  
123 for diversion. In this case, the specific material terms of the Diversion Contract  
124 agreed to by the respondent are to be recorded as a part of the screening panel  
125 record, along with any comments by the complainant. The screening panel shall  
126 have no further involvement in processing the diversion. The Diversion  
127 Committee shall process the diversion in accordance with Rule 14-533.

128 (b)(6)(C) The informal complaint shall be referred to the Professionalism  
129 Counseling Board established pursuant to the Supreme Court's Standing Order  
130 No. 7;

131 (b)(6)(D) The informal complaint shall be referred to the Committee chair with  
132 an accompanying screening panel recommendation that the respondent be  
133 admonished;

134 (b)(6)(E) The informal complaint shall be referred to the Committee chair with  
135 an accompanying screening panel recommendation that the respondent receive  
136 a public reprimand; or

137 (b)(6)(F) A formal complaint shall be filed against the respondent pursuant to  
138 Rule 14-511.

139 (b)(7) Recommendation of admonition or public reprimand. A screening panel  
140 recommendation that the respondent should be disciplined under subsection  
141 (b)(6)(~~DC~~) or (b)(6)(~~ED~~) shall be in writing and shall state the substance and  
142 nature of the informal complaint and defenses and the basis upon which the  
143 screening panel has concluded, by a preponderance of the evidence, that the  
144 respondent should be admonished or publicly reprimanded. A copy of such  
145 screening panel recommendation shall be delivered to the Committee chair and a  
146 copy served upon the respondent.

147 (b)(8) 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  
150 within the five years immediately preceding the alleged offense.

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

156 (c) Exceptions to screening panel determinations and recommendations.  
157 Within 30 days after the date of the determination of the screening panel of a  
158 dismissal, dismissal with letter of caution, a referral to the Diversion Committee, a  
159 referral to the Professionalism Counseling Board, or the recommendation of an  
160 admonition, or the recommendation of a public reprimand, OPC may file with the  
161 Committee chair exceptions to the determination or recommendation and may

162 request a hearing. The respondent shall then have 30 days within which to make  
163 a response, and the response shall include respondent's exceptions, if any, to a  
164 recommendation of an admonition or reprimand. Within 30 days after service by  
165 OPC of the recommendation of an admonition or public reprimand on respondent,  
166 the respondent may file with the Committee chair exceptions to the  
167 recommendation and may request a hearing. No exception may be filed to a  
168 screening panel determination that a formal complaint shall be filed against a  
169 respondent pursuant to Rule 14-511. All exceptions shall include a memorandum,  
170 not to exceed 20 pages, stating the grounds for review, the relief requested and  
171 the bases in law or in fact for the exceptions.

172 (d) Procedure on exceptions.

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

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

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

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

192 (d)(3) Burden of proof. The party who files exceptions under subsection (c)  
193 shall have the burden of showing that the determination or recommendation of  
194 the screening panel is unsupported by substantial evidence or is arbitrary,  
195 capricious, legally insufficient or otherwise clearly erroneous.

196 (d)(4) Response. The party opposing the exception may file a written  
197 response within the time allowed by the Exceptions Officer.

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

201 (e) Final Committee disposition. Either upon the completion of the exceptions  
202 procedure under subsection (d) or if no exceptions have been filed under  
203 subsection (c), the Committee chair shall issue a final, written determination that  
204 either sustains, dismisses, or modifies the determination or recommendation of  
205 the screening panel. No final written determination is needed by the Committee  
206 chair to a screening panel determination to a dismissal, a dismissal with a letter  
207 of caution, ~~or a referral to the Diversion Committee,~~ or a dismissal with referral to  
208 the Professionalism Counseling Board, if no exception is filed.

209 (f) Appeal of a final Committee determination.

210 (f)(1) Within 30 days after the date of a final, written determination of the  
211 Committee chair under (c), OPC may file a request for review by the Supreme  
212 Court seeking reversal or modification of the final determination of the Committee.  
213 Within 30 days after service by OPC of a final, written determination of the  
214 Committee chair under subsection (c), the respondent may file a request for  
215 review with the Supreme Court seeking reversal or modification of the final  
216 determination by the Committee. A request for review under this subsection shall  
217 only be available in cases where exceptions have been filed under subsection (c).  
218 Dissemination of disciplinary information pursuant to Rules 14-504(b)(13) or 14-  
219 516 shall be automatically stayed during the period within which a request for  
220 review may be filed under this subsection. If a timely request for review is filed,  
221 the stay shall remain in place pending resolution by the Supreme Court unless  
222 the Court otherwise orders.

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

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

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

230 (f)(5) The party requesting review shall have the burden of demonstrating that  
231 the Committee action was:

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

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

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

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

238 (g) General procedures.

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

241 (g)(2) Service. To the extent applicable, service or filing of documents under  
242 this Rule is to be made in accordance with Utah Rules of Civil Procedure 5(b)(1),  
243 5(d) and 6(a).

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

248 [Advisory Committee Notes](#)