

Rule 14-504.

1       **Rule 14-504. OPC counsel.**

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

5       (b) Powers and duties. The senior counsel shall perform all prosecutorial functions and have the  
6       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 whether it is within  
8           the jurisdiction of the OPC in that it relates to misconduct by a lawyer or to the incapacity of a lawyer;

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

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

13           (b)(3)(A) dismiss;

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

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

16          or

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

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

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

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

28          ~~(b)(7) notify promptly the complainant, the respondent, and any counsel of record of the~~  
29          ~~disposition of each matter;~~

30          ~~(b)(8)-(b)(7)~~ notify each jurisdiction in which a respondent is admitted of a transfer to disability  
31          status or any public discipline imposed in Utah;

32          ~~(b)(9)-(b)(8)~~ seek reciprocal discipline where appropriate when informed of any public discipline  
33          imposed by another court, another jurisdiction, or a regulatory body having disciplinary jurisdiction;

34          ~~(b)(10)-(b)(9)~~ forward a certified copy of the judgment of conviction to the disciplinary agency in  
35          each jurisdiction in which a lawyer is admitted when the lawyer is convicted of a crime in Utah which  
36          reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer;

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37 ~~(b)(11)~~(b)(10) maintain permanent records of discipline and disability matters subject to any  
38 expungement requirements and compile statistics to aid in the administration of the system, including  
39 but not limited to, a log of all informal complaints received, investigative files, statistical summaries of  
40 rules violated and dispositions, any transcripts of proceedings, and other records as the Supreme  
41 Court requires to be maintained;

42 ~~(b)(12)~~(b)(11) expunge after seven years all records or other evidence of the existence of any  
43 informal complaint terminated by dismissal or a declination to prosecute;

44 ~~(b)(12)(A)~~(b)(11)(A) Notice to respondent. If the respondent was contacted by the OPC  
45 concerning the informal complaint, or the OPC otherwise knows that the respondent is aware of  
46 the existence of the informal complaint, the respondent shall be given prompt written notice of the  
47 expungement.

48 ~~(b)(12)(B)~~(b)(11)(B) Effect of expungement. After a file has been expunged, any OPC  
49 response to an inquiry requiring a reference to the matter shall state that there is no record of  
50 such matter. The respondent may answer any inquiry requiring a reference to an expunged  
51 matter by stating that no informal complaint was made.

52 ~~(b)(13)~~(b)(12) provide informal guidance concerning professional conduct to members of the Bar  
53 requesting guidance, participate in seminars which will promote ethical conduct by the Bar, formulate  
54 diversionary programs, monitor probations, and disseminate disciplinary results to the Bar and the  
55 public through the Utah Bar Journal and otherwise as appropriate, maintaining the confidentiality of  
56 respondents subject to private discipline; and

57 ~~(b)(14)~~(b)(13) along with the executive director annually formulate the budget for the OPC and  
58 submit the budget to the Board for approval. OPC counsel may petition the Supreme Court for review  
59 of modifications to the budget imposed by the Board.

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

65 (d) Effect of ethics advisory opinions. The OPC shall not prosecute a Utah lawyer for conduct that is  
66 in compliance with an ethics advisory opinion that has not been withdrawn at the time of the conduct in  
67 question. No court is bound by an ethics opinion's interpretation of the Utah Rules of Professional  
68 Conduct.

69 (d)(1) The OPC may at any time request the Bar's Ethics Advisory Opinion Committee to review,  
70 modify or withdraw an ethics advisory opinion and if so, any OPC investigation or prosecution is  
71 suspended pending the final outcome of the request. The Ethics Advisory Opinion Committee may  
72 issue a modified opinion, withdraw the opinion or decline to take any action but shall report its action

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73 or recommendation to the Board of Bar Commissioners and the Board will take such final action as it  
74 deems appropriate.

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

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