

Rule 14-510.

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 Bar by any person,
4 OPC counsel or the Committee, by filing with the Bar, in writing, an informal complaint in ordinary, plain
5 and concise language setting forth the acts or omissions claimed to constitute unprofessional conduct.
6 Upon filing, an informal complaint shall be processed in accordance with this article.

7 (a)(2) Form of informal complaint. The informal complaint need not be in any particular form or style
8 and may be by letter or other informal writing, although a form may be provided by the OPC to
9 standardize the informal complaint format. It is unnecessary that the informal complaint recite disciplinary
10 rules, ethical canons or a prayer requesting specific disciplinary action. The informal complaint shall be
11 signed by the complainant and shall set forth the complainant's address, and may list the names and
12 addresses of other witnesses. The informal complaint shall be notarized and contain a verification
13 attesting to the accuracy of the information contained in the complaint. In accordance with Rule 14-
14 504(b), complaints filed by OPC are not required to contain a verification. The substance of the informal
15 complaint shall prevail over the form.

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

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

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

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37 (a)(6) Answer to informal complaint. Within 20 days after service of the NOIC on the respondent, the
38 respondent shall file with OPC counsel a written and signed answer setting forth in full an explanation of
39 the facts surrounding the informal complaint, together with all defenses and responses to the claims of
40 possible misconduct. For good cause shown, OPC counsel may extend the time for the filing of an
41 answer by the 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 for investigation,
43 consideration and determination or recommendation. OPC counsel shall forward a copy of the answer to
44 the complainant.

45 (a)(7) Dismissal of informal complaint. An informal complaint which, upon consideration of all factors,
46 is determined by OPC counsel to be frivolous, unintelligible, barred by the statute of limitations, more
47 adequately addressed in another forum, unsupported by fact or which does not raise probable cause of
48 any unprofessional conduct, or which OPC declines to prosecute may be dismissed by OPC counsel
49 without hearing by a screening panel. OPC counsel shall notify the complainant of such dismissal stating
50 the reasons therefor. The complainant may appeal a dismissal by OPC counsel ~~to~~ by filing written notice
51 with the Clerk of the Committee chair within 15 days after notification of the dismissal is mailed. Upon
52 appeal, the Committee chair shall conduct a de novo review of the file, either affirm the dismissal or
53 require OPC counsel to prepare a NOIC, and set the matter for hearing by a screening panel. In the event
54 of the chair's recusal, the chair shall appoint the vice chair or one of the screening panel chairs to review
55 and determine the appeal.

56 (b) Proceedings before Committee and screening panels.

57 (b)(1) Review and investigation. In their role as fact finders and investigators, screening panels shall
58 review all informal complaints referred to them by OPC counsel, including all the facts developed by the
59 informal complaint, answer, investigation and hearing, and the recommendations of OPC counsel. Prior to
60 any hearing OPC may ~~provide the screening panel file with the clerk and serve on the respondent a~~
61 ~~summary of its investigation. If provided filed,~~ the summary shall identify with particularity any additional
62 violations of the Rules of Professional Conduct as subsequently determined by OPC after service of the
63 NOIC. If provided to the screening panel, the summary shall also be provided to the respondent and shall
64 serve as notice of any additional violations not previously charged by OPC in the NOIC. If additional rule
65 violations are alleged in the summary, the summary shall be ~~provided to~~ served on the respondent no
66 less than seven days prior to the hearing. In cases where a judicial officer has not addressed or reported
67 a respondent's alleged misconduct, the screening panel should not consider this inaction to be evidence
68 either that misconduct has occurred or has not occurred.

69 (b)(2) Respondent's appearance. Before any action is taken that may result in the recommendation of
70 an admonition or public reprimand or the filing of a formal complaint, the screening panel shall, upon at
71 least 30 days' notice, afford the respondent an opportunity to appear before the screening panel.
72 Respondent and any witnesses called by the respondent may testify, and respondent may present oral
73 argument with respect to the informal complaint. Respondent may also submit a written brief to the

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74 screening panel at least 10 days prior to the hearing, which shall not exceed 10 pages in length unless
75 permission for enlargement is extended by the panel chair or vice-chair for good cause shown. A copy of
76 the brief shall be forwarded by OPC counsel to the complainant. If OPC identifies additional rule violations
77 in the summary referenced in (b)(1), the respondent may file an additional written response addressing
78 those alleged violations prior to the hearing.

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

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

88 (b)(5) Rule Violations Not Charged by OPC. During the screening panel hearing, but not after, the
89 panel may find that rule violations not previously charged by OPC in the NOIC or summary memorandum
90 have occurred. If so, the screening panel shall give the respondent a reasonable opportunity to respond
91 during the hearing. The respondent may address the additional charges at the hearing and also ~~provide~~
92 ~~the panel with~~ file with the Clerk and serve on OPC within two business days of the hearing a written
93 response to the new charges along with supplemental materials related to the new charges. ~~Any written~~
94 ~~response and supplemental materials shall be submitted to OPC within five business days of the hearing.~~
95 ~~OPC shall promptly deliver the response to the panel.~~ Prior to making a determination or
96 recommendation, the response and any supplemental materials shall be reviewed and considered by at
97 least a quorum of the panel members present at the original hearing.

98 (b)(6) Hearing Record. The proceedings of any hearing before a screening panel under this
99 subsection (b) shall be recorded at a level of audio quality that permits an accurate transcription of the
100 proceedings. ~~Pursuant to its function as secretary to the Committee under Rule 14-503(h)(1), OPC shall~~
101 ~~be responsible for the assembly of the~~ The Clerk shall assemble a complete record of the proceedings, to
102 ~~be delivered and deliver it~~ to the chair of the Committee upon the rendering of the panel's determination
103 or recommendation to the Committee chair. The record of the proceedings before the panel shall be
104 preserved for not less than one year following delivery of the panel's determination or recommendation to
105 the chair of the Committee and for such additional period as any further proceedings on the matter are
106 pending or might be instituted under this section.

107 (b)(7) Screening panel determination or recommendation. Upon review of all the facts developed by
108 the informal complaint, answer, investigation and hearing, the screening panel shall make one of the
109 following determinations or recommendations:

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110 (b)(7)(A) The preponderance of evidence presented does not establish that the respondent was
111 engaged in misconduct, in which case the informal complaint shall be dismissed. ~~OPC counsel shall~~
112 ~~promptly give notice of such dismissal by regular mail to the complainant and the respondent.~~ A letter of
113 caution may also be issued with the dismissal. The letter shall be signed by OPC counsel or the
114 screening panel chair and shall serve as a guide for the future conduct of the respondent. The
115 complainant shall also be confidentially notified of the caution;

116 (b)(7)(B) The informal complaint shall be referred to the Diversion Committee for diversion. In this
117 case, the specific material terms of the Diversion Contract agreed to by the respondent are to be
118 recorded as a part of the screening panel record, along with any comments by the complainant. The
119 screening panel shall have no further involvement in processing the diversion. The Diversion Committee
120 shall process the diversion in accordance with Rule 14-533.

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

123 (b)(7)(D) The informal complaint shall be referred to the Committee chair with an accompanying
124 screening panel recommendation that the respondent be admonished;

125 (b)(7)(E) The informal complaint shall be referred to the Committee chair with an accompanying
126 screening panel recommendation that the respondent receive a public reprimand; or

127 (b)(7)(F) A formal complaint shall be filed against the respondent if the panel finds there is probable
128 cause to believe there are grounds for public discipline and that a formal complaint is merited. A formal
129 complaint shall also be filed if the panel finds there was misconduct and the misconduct is similar to the
130 misconduct alleged in a formal complaint against the respondent that has been recommended by a
131 screening panel or is pending in district court at the time of the hearing.

132 (b)(8) Aggravation and Mitigation. The respondent and OPC may present evidence and argument as
133 to mitigating and aggravating circumstances during the screening panel hearing, but this evidence shall
134 not be considered until after the panel has determined the respondent engaged in misconduct.

135 (b)(9) Multiple cases involving the same respondent. More than one case involving the same
136 respondent may be scheduled before the same panel. In determining whether a rule has been violated in
137 one case, a screening panel shall not consider the fact it may be hearing multiple cases against the same
138 respondent.

139 (b)(10) Recommendation of admonition or public reprimand. A screening panel recommendation that
140 the respondent should be disciplined under subsection (b)(7)(D) or (b)(7)(E) shall be in writing and shall
141 state the substance and nature of the informal complaint and defenses and the basis upon which the
142 screening panel has concluded, by a preponderance of the evidence, that the respondent should be
143 admonished or publicly reprimanded. A copy of ~~such screening panel~~ the recommendation shall be
144 delivered to the Committee chair and a copy served upon the respondent and OPC.

145 (c) Exceptions to screening panel determinations and recommendations. Within 30 days after the
146 date of service of the determination of the screening panel of a dismissal, dismissal with letter of caution,

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147 a referral to the Diversion Committee, a referral to the Professionalism Counseling Board, or the
148 recommendation of an admonition, or the recommendation of a public reprimand, OPC may file with the
149 Clerk of the Committee chair exceptions to the determination or recommendation and may request a
150 hearing. The respondent shall then have 30 days within which to make a response, and the response
151 shall include respondent's exceptions, if any, to a recommendation of an admonition or reprimand. Within
152 30 days after service by OPC of the recommendation of an admonition or public reprimand on
153 respondent, the respondent may file with the Clerk of the Committee chair exceptions to the
154 recommendation and may request a hearing, and OPC shall have 30 days within which to file a response.
155 The Committee chair may allow a reply to any response. No exception may be filed to a screening panel
156 determination that a formal complaint shall be filed against a respondent pursuant to Rule 14-511. All
157 exceptions shall include a memorandum, not to exceed 20 pages, stating the grounds for review, the
158 relief requested and the bases in law or in fact for the exceptions.

159 (d) Procedure on exceptions.

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

162 (d)(2) Hearing requested. If a request for a hearing is made, the Committee chair or a screening
163 panel chair designated by the Committee chair shall serve as the Exceptions Officer and hear the matter
164 in an expeditious manner, with OPC counsel and the respondent having the opportunity to be present and
165 give an oral presentation. The complainant need not appear personally.

166 (d)(3) Transcript Request. Upon request the Committee chair shall extend the deadlines for filing
167 exceptions or responses in order to allow a party time to obtain a transcript of the screening panel
168 proceedings. The cost of such transcript shall be borne by the requesting party. ~~If a transcript is~~
169 ~~requested, OPC will also provide the Committee chair with a copy of the transcript as transcribed by a~~
170 ~~court reporting service~~ The party obtaining the transcript shall file it with the Clerk, together with an
171 affidavit establishing the chain of custody of the record.

172 (d)(4) Burden of proof. The party who files exceptions under subsection (c) shall have the burden of
173 showing that the determination or recommendation of the screening panel is unsupported by substantial
174 evidence or is arbitrary, capricious, legally insufficient or otherwise clearly erroneous.

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

177 (e) Final Committee disposition. Either upon the completion of the exceptions procedure under
178 subsection (d) or if no exceptions have been filed under subsection (c), the Committee chair shall issue a
179 final, written determination that either sustains, dismisses, or modifies the determination or
180 recommendation of the screening panel. No final written determination is needed by the Committee chair
181 to a screening panel determination to a dismissal, a dismissal with a letter of caution, or a referral to the
182 Diversion Committee if no exception is filed.

183 (f) Appeal of a final Committee determination.

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184 (f)(1) Within 30 days after ~~the date service~~ of a final, written determination of the Committee chair
185 under subsection (e), the respondent or OPC may file a request for review by the Supreme Court seeking
186 reversal or modification of the final determination of the Committee. ~~Within 30 days after service by OPC~~
187 ~~of a final, written determination of the Committee chair under subsection (e), the respondent may file a~~
188 ~~request for review with the Supreme Court seeking reversal or modification of the final determination by~~
189 ~~the Committee.~~ A request for review under this subsection shall only be available in cases where
190 exceptions have been filed under subsection (c). Dissemination of disciplinary information pursuant to
191 Rules 14-504(b)(13) or 14-516 shall be automatically stayed during the period within which a request for
192 review may be filed under this subsection. If a timely request for review is filed, the stay shall remain in
193 place pending resolution by the Supreme Court unless the Court otherwise orders.

194 (f)(2) A request for review under this subsection (f) will be subject to the procedures set forth in Title
195 III of the Utah Rules of Appellate Procedure. Documents submitted under this Rule shall conform to the
196 requirements of Rules 27(a) and 27(b) of the Utah Rules of Appellate Procedure.

197 (f)(3) A party requesting a transcription of the record below shall bear the costs. ~~OPC will provide the~~
198 ~~Court with the transcript as transcribed by a court reporting service.~~ The party obtaining the transcript shall
199 file it with the Clerk of the Court, together with an affidavit establishing the chain of custody of the record.

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

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

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

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

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

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

209 (g) General procedures.

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

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

214 (g)(3) Continuance of disciplinary proceedings. A disciplinary proceeding may be held in abeyance by
215 the Committee chair prior to the filing of a formal complaint when the allegations or the informal complaint
216 contain matters of substantial similarity to the material allegations of pending criminal or civil litigation in
217 which the respondent is involved.

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