

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 should

30 be in writing and, at the discretion of OPC counsel, may include any or all information  
31 included in an informal complaint or additional facts submitted by a complainant.

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

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

53 (a)(7) Dismissal of informal complaint. An informal complaint which, upon  
54 consideration of all factors, is determined by OPC counsel to be frivolous, unintelligible,  
55 barred by the statute of limitations, more adequately addressed in another forum,  
56 unsupported by fact or which does not raise probable cause of any unprofessional  
57 conduct, or which OPC declines to prosecute may be dismissed by OPC counsel  
58 without hearing by a screening panel. OPC counsel shall notify the complainant of such  
59 dismissal stating the reasons therefor. The complainant may appeal a dismissal by OPC

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

66 (b) Proceedings before Committee and screening panels.

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

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

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

86 (b)(4) Right to hear evidence; cross-examination. The complainant and the  
87 respondent shall have the right to be present during the presentation of the evidence  
88 unless excluded by the screening panel chair for good cause shown. Respondent may  
89 be represented by counsel, and complainant may be represented by counsel or some

90 other representative. Either complainant or respondent may seek responses from the  
91 other party at the hearing by posing questions or areas of inquiry to be asked by the  
92 panel chair. Direct cross-examination will ordinarily not be permitted except, upon  
93 request, when the panel chair deems that it would materially assist the panel in its  
94 deliberations.

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

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

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

115 (b)(6)(B) The informal complaint shall be referred to the Diversion Committee for  
116 diversion. In this case, the specific material terms of the Diversion Contract agreed to by  
117 the respondent are to be recorded as a part of the screening panel record, along with  
118 any comments by the complainant. The screening panel shall have no further

119 involvement in processing the diversion. The Diversion Committee shall process the  
120 diversion in accordance with Rule 14-533.

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

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

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

128 (b)(6)(F) A formal complaint shall be filed against the respondent pursuant to Rule  
129 14-511.

130 (b)(7) Recommendation of admonition or public reprimand. A screening panel  
131 recommendation that the respondent should be disciplined under subsection (b)(6)(C)  
132 or (b)(6)(D) shall be in writing and shall state the substance and nature of the informal  
133 complaint and defenses and the basis upon which the screening panel has concluded,  
134 by a preponderance of the evidence, that the respondent should be admonished or  
135 publicly reprimanded. A copy of such screening panel recommendation shall be  
136 delivered to the Committee chair and a copy served upon the respondent.

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

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

146 (c) Exceptions to screening panel determinations and recommendations. Within 30  
147 days after the date of the determination of the screening panel of a dismissal, dismissal  
148 with letter of caution, a referral to the Diversion Committee, a referral to the

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

161 (d) Procedure on exceptions.

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

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

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

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

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

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

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

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

195 (f) Appeal of a final Committee determination.

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

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

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

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

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

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

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

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

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

222 (g) General procedures.

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

225 (g)(2) Service. To the extent applicable, service or filing of documents under this  
226 Rule is to be made in accordance with Utah Rules of Civil Procedure 5(b)(1), 5(d) and  
227 6(a).

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

231 [Advisory Committee Notes](#)

232