

1 **Rule ~~14-517~~11-542. Additional rules of procedure.**

2 (a) **Governing rules.** ~~Except as~~Unless otherwise provided in this article, the Utah Rules
3 of Civil Procedure, ~~the~~ Utah Rules of Appellate Procedure ~~governing civil appeals~~, and
4 ~~the~~ Utah Rules of Evidence apply in ~~formal discipline a~~Actions ~~and disability actions~~.

5 (b) **Standard of proof.** ~~A Formal complaints of~~ misconduct Action, petitions for
6 reinstatement and ~~readmission~~relicensure, and petitions for transfer to and from
7 disability status ~~shall~~will be established by a preponderance of the evidence. A
8 ~~M~~motions for interim ~~suspension~~discipline ~~pursuant to~~under Rule ~~14-518~~11-563 ~~shall~~
9 will also be established by a preponderance of the~~clear and convincing~~ evidence.

10 (c) **Burden of proof.** The OPC carries the burden of proof in discipline proceedings and
11 ~~seeking discipline or~~ transfers to disability status ~~is on the OPC~~. The Respondent carries
12 the burden of proof in ~~proceedings~~ seeking a reversal of a screening panel
13 recommendation of discipline, ~~or seeking~~ reinstatement, ~~readmission,~~relicensure, or
14 transfer from disability status ~~is on the respondent~~.

15 (d) **Related pending litigation.** ~~Upon a showing of good cause, a~~Either party may
16 request a stay of an ~~formal a~~Action ~~or a disability proceeding may be stayed~~ because of
17 substantial similarity to the material allegations of a pending criminal, civil, or
18 disciplinary aAction.

19 (e) **The eComplainant's actions.** An Action will not be abated due to:

- 20 (1) Neither unwillingness of the eComplainant's unwillingness to prosecute a n
21 ~~informal or formal eComplaint;~~ nor
- 22 (2) settlement or compromise between the eComplainant and the rRespondent;
23 or
- 24 (3) nor restitution by the rRespondent. ~~shall, in and of itself, justify abatement of~~
25 ~~disciplinary proceedings.~~

26 (f) ~~Informal and formal complaints~~ Complaints against OPC ~~e~~Counsel, Committee
27 members, the ~~Board~~Bar Commission, or ~~l~~Lawyers employed by the ~~Utah State~~ Bar.
28 The Committee chair will assign a screening panel ~~A~~any ~~informal e~~Complaint filed
29 against OPC ~~e~~Counsel, ~~a members of the~~ Committee member, a ~~Board~~Bar Commission
30 member, or a ~~l~~Lawyer employed by the Utah State Bar, ~~or a member of the Board shall~~
31 ~~be assigned by the Chair to a screening panel~~. The ~~chair of the~~ assigned panel chair shall
32 will review the ~~informal e~~Complaint and any additional material, ~~if any~~, that the
33 screening panel chair asks the ~~r~~Respondent to provide.

34 (1) ~~An informal e~~Complaint will be dismissed without hearing by a screening
35 panel if ~~which~~, ~~upon~~after consideration ~~of~~ing all factors, the chair determines the
36 Complaint is: ~~is determined by the screening panel chair to be~~

37 (A) frivolous ~~or~~; unintelligible;_z

38 (B) barred by the statute of limitations;_z

39 (C) ~~is~~ being or should have been addressed in another more appropriate
40 forum;_z ~~or~~

41 (D) unsupported by fact or ~~which~~ does not raise probable cause of any
42 unprofessional conduct, ~~shall be dismissed without hearing by a screening~~
43 ~~panel~~.

44 (2) The ~~chair of the~~ screening panel chair shall must notify the Complainant of
45 the dismissal and ~~stating~~ the reasons ~~therefor~~for dismissal.

46 (3) The eComplainant may appeal ~~a~~ the screening panel chair's dismissal ~~by the~~
47 ~~chair of the screening panel~~ to the Committee chair within 215 days after
48 notification of the dismissal is mailed.

49 (4) Upon appeal, the Committee chair ~~shall~~must conduct a de novo review of the
50 file, and either affirm or reverse the dismissal.

51 (5) If the screening panel chair determines not to dismiss the eComplaint, or the
52 Committee chair reverses the dismissal on appeal, the Committee chair ~~shall~~
53 must request that the Supreme Court appoint a special counsel to present the
54 case, and if necessary, a special screening panel. In all other respects, the matter
55 ~~shall~~will proceed in accordance with this article. Special counsel ~~shall~~must be a
56 lawyer outside of the OPC appointed by the Supreme Court to act as counsel for
57 investigation and prosecution of the ~~disciplinary e~~Complaint. Special counsel
58 ~~shall~~must notify the OPC of the results of the investigation.

59 *Effective December 15, 2020*