

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  
4 person, OPC counsel or the Committee, by filing with the Bar, in writing, an informal complaint in ordinary,  
5 plain and concise language setting forth the acts or omissions claimed to constitute unprofessional  
6 conduct. 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  
8 style 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 and Civility Counseling Board.** In connection with  
21 any conduct that comes to their attention, whether by means of an informal complaint, a preliminary  
22 investigation, or any other means, OPC counsel may, at its discretion, refer any matter to the  
23 Professionalism and Civility Counseling Board established pursuant to Rule 14-303~~the Supreme Court's~~  
24 ~~Standing Order No. 7.~~ Such referral may be in addition to or in lieu of any further proceedings related to  
25 the subject matter of the referral. Such referral should be in writing and, at the discretion of OPC counsel,  
26 may include any or all information included in an informal complaint or additional facts submitted by a  
27 complainant.

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

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

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

57 (b) **Proceedings before Committee and screening panels.**

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

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

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

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

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

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

97 (b)(6) **Hearing Record.** The proceedings of any hearing before a screening panel under this  
98 subsection (b) shall be recorded at a level of audio quality that permits an accurate transcription of the  
99 proceedings. The Clerk shall assemble a complete record of the proceedings and deliver it to the chair of  
100 the Committee upon the rendering of the panel's determination or recommendation to the Committee  
101 chair. The record of the proceedings before the panel shall be preserved for not less than one year  
102 following delivery of the panel's determination or recommendation to the chair of the Committee and for  
103 such additional period as any further proceedings on the matter are pending or might be instituted under  
104 this section.

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

108 (b)(7)(A) The preponderance of evidence presented does not establish that the respondent was  
109 engaged in misconduct, in which case the informal complaint shall be dismissed. A letter of caution  
110 may also be issued with the dismissal. The letter shall be signed by OPC counsel or the screening

111 panel chair and shall serve as a guide for the future conduct of the respondent. The complainant shall  
112 also be confidentially notified of the caution;

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

118 (b)(7)(C) The informal complaint shall be referred to the Professionalism and Civility Counseling  
119 Board established pursuant to the ~~Supreme Court's Standing Order No. 7~~ Rule 14-303;

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

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

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

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

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

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

142 (c) **Exceptions to screening panel determinations and recommendations.** Within 30 days after  
143 the date of service of the determination of the screening panel of a dismissal, dismissal with letter of  
144 caution, a referral to the Diversion Committee, a referral to the Professionalism and Civility Counseling  
145 Board, or the recommendation of an admonition, or the recommendation of a public reprimand, OPC may  
146 file with the Clerk of the Committee exceptions to the determination or recommendation and may request  
147 a hearing. The respondent shall then have 30 days within which to make a response, and the response

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

156 **(d) Procedure on exceptions.**

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

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

163 **(d)(3) Transcript Request.** Upon request the Committee chair shall extend the deadlines for filing  
164 exceptions or responses in order to allow a party time to obtain a transcript of the screening panel  
165 proceedings. The cost of such transcript shall be borne by the requesting party. The party obtaining the  
166 transcript shall file it with the Clerk, together with an affidavit establishing the chain of custody of the  
167 record.

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

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

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

179 **(f) Appeal of a final Committee determination.**

180 **(f)(1)** Within 30 days after service of a final, written determination of the Committee chair under  
181 subsection (e), the respondent or OPC may file a request for review by the Supreme Court seeking  
182 reversal or modification of the final determination of the Committee. A request for review under this  
183 subsection shall only be available in cases where exceptions have been filed under subsection (c).  
184 Dissemination of disciplinary information pursuant to Rules 14-504(b)(13) or 14-516 shall be automatically

185 stayed during the period within which a request for review may be filed under this subsection. If a timely  
186 request for review is filed, the stay shall remain in place pending resolution by the Supreme Court unless  
187 the Court otherwise orders.

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

191 (f)(3) A party requesting a transcription of the record below shall bear the costs. The party obtaining  
192 the transcript shall file it with the Clerk of the Court, together with an affidavit establishing the chain of  
193 custody of the record.

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

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

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

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

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

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

203 (g) **General procedures.**

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

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

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