

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 Counseling Board.** In connection with any conduct  
21 that comes to their attention, whether by means of an informal complaint, a preliminary investigation, or  
22 any other means, OPC counsel may, at its discretion, refer any matter to the Professionalism Counseling  
23 Board established pursuant to Rule 14-303~~the Supreme Court's Standing Order No. 7~~. Such referral may  
24 be in addition to or in lieu of any further proceedings related to the subject matter of the referral. Such  
25 referral should be in writing and, at the discretion of OPC counsel, may include any or all information  
26 included in 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.

37 (a)(6) **Answer to informal complaint.** Within 20 days after service of the NOIC on the respondent,  
38 the respondent shall file with OPC counsel a written and signed answer setting forth in full an explanation  
39 of 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  
46 factors, is determined by OPC counsel to be frivolous, unintelligible, barred by the statute of limitations,  
47 more adequately addressed in another forum, unsupported by fact or which does not raise probable  
48 cause of any unprofessional conduct, or which OPC declines to prosecute may be dismissed by OPC  
49 counsel without hearing by a screening panel. OPC counsel shall notify the complainant of such dismissal  
50 stating the reasons therefor. The complainant may appeal a dismissal by OPC counsel by filing written  
51 notice with the Clerk of the Committee 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  
58 shall review all informal complaints referred to them by OPC counsel, including all the facts developed by  
59 the informal complaint, answer, investigation and hearing, and the recommendations of OPC counsel.  
60 Prior to any hearing OPC may file with the clerk and serve on the respondent a summary of its  
61 investigation. If filed, the summary shall identify with particularity any additional violations of the Rules of  
62 Professional Conduct as subsequently determined by OPC after service of the NOIC. If provided to the  
63 screening panel, the summary shall also be provided to the respondent and shall serve as notice of any  
64 additional violations not previously charged by OPC in the NOIC. If additional rule violations are alleged in  
65 the summary, the summary shall be served on the respondent no less than seven days prior to the  
66 hearing. In cases where a judicial officer has not addressed or reported a respondent's alleged  
67 misconduct, the screening panel should not consider this inaction to be evidence either that misconduct  
68 has occurred or has not occurred.

69 (b)(2) **Respondent's appearance.** Before any action is taken that may result in the recommendation  
70 of 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

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  
82 the right to be present during the presentation of the evidence unless excluded by the screening panel  
83 chair 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 file with  
92 the Clerk and serve on OPC within two business days of the hearing a written response to the new  
93 charges along with supplemental materials related to the new charges. Prior to making a determination or  
94 recommendation, the response and any supplemental materials shall be reviewed and considered by at  
95 least a quorum of the panel members present at the original hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

202 (g) **General procedures.**

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

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

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