

Rule 1-542. Additional rules of procedure.

(a) **Governing rules.** Unless otherwise provided in this article, the Utah Rules of Civil Procedure, Utah Rules of Appellate Procedure, and Utah Rules of Evidence apply in Actions.

(b) **Standard of proof.** ~~A misconduct~~ Claims or requests for relief brought in an Action, a petition for reinstatement and relicensure, ~~and~~ or a petition for transfer to and from disability status ~~will~~ must be established by a preponderance of the evidence. A ~~motion~~ claim for interim discipline under Rule 1-563 ~~will~~ must also be established by a preponderance of the evidence.

(c) **Burden of proof.** The OPC carries the burden of proof in a discipline ~~proceedings~~ proceeding and ~~transfers~~ in seeking a transfer to disability status. The Respondent carries the burden of proof in seeking a reversal of a screening panel recommendation of discipline, reinstatement, relicensure, or transfer from disability status.

(d) **Related pending litigation.** Either party may request a stay of an Action because ~~of~~ ~~substantial similarity~~ the claims alleged in the Action are substantially similar to the material allegations of a pending criminal, or civil, case or ~~disciplinary~~ Action.

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

(1) the Complainant's unwillingness to prosecute a Complaint;

(2) settlement or compromise between the Complainant and the Respondent; or

(3) restitution by the Respondent.

(f) **Complaints against OPC Counsel, Committee members, the Bar Commission, or Lawyers employed by the Bar.** The Committee chair will assign a screening panel any Complaint filed against OPC Counsel, a Committee member, a Bar Commission member, or a Lawyer employed by the ~~Utah State~~ Bar. The assigned panel chair will review the

Complaint and any additional material that the screening panel chair asks the Respondent to provide.

(1) A Complaint will be dismissed without hearing by a screening panel if, after considering all factors, the chair determines the Complaint is:

(A) frivolous or unintelligible;

(B) barred by the statute of limitations;

(C) being or should have been addressed in another more appropriate forum; or

(D) unsupported by fact or does not raise probable cause of any unprofessional conduct.

(2) The screening panel chair must notify the Complainant of the dismissal and the reasons for dismissal.

(3) The Complainant may appeal the screening panel chair's dismissal to the Committee chair within 21 days after notification of the dismissal is ~~mailed~~sent.

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

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

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