

1 **Rule 1-530. ~~P~~Unprofessional misconduct ~~Complaints~~proceedings.**

2 (a) Scope. The OPC or any person may bring a disciplinary Complaint against a Lawyer
 3 for professional misconduct. Damages are not available in disciplinary proceedings.
 4 Restitution is available only when awarded by a district court in an Action filed by the
 5 OPC.

6 (b) Filing. The OPC or any person may initiate a disciplinary proceeding ~~against any~~
 7 ~~Lawyer~~ by filing a written Complaint in concise language setting forth the acts or
 8 omissions claimed to constitute ~~un~~professional misconduct.

9 (1) If ~~an individual~~ person initiates the Complaint, filing is complete when the
 10 Complaint is delivered to the OPC office in hard copy or electronic form, ~~or~~ is
 11 electronically filed through the OPC’s website at opcutah.org.

12 (2) If the OPC initiates the Complaint, filing is complete when the OPC delivers the
 13 Complaint to the Lawyer in hard copy or electronic form.

14 (3) If a person who files a Complaint later elects to withdraw the complaint, the OPC
 15 may, in its discretion, proceed with the matter without filing a separate complaint.

16 ~~(c)~~ **Complaint form.**

17 (1) The Complaint ~~need~~ does not need to be in any particular form ~~or class~~ and may
 18 be by letter or other informal writing, although the OPC may provide a form to
 19 standardize the format. The Complaint does not need ~~not to~~ recite disciplinary rules
 20 ~~or~~ ethical canons, ~~or~~ a prayer request~~ing~~ specific disciplinary action. A Complaint’s
 21 substance prevails over the form.

22 (2) The Complainant must sign the Complaint and include the Complainant’s address
 23 and may list the names and addresses of other witnesses.

24 (3) The Complaint must contain an unsworn declaration ~~as to the accuracy of that~~
 25 complies with Utah Code section 78B-18a-106 declaring that the information in the
 26 Complaint is true and correct. Complaints filed by the OPC ~~are not required to~~

27 ~~contain~~do not need such a declaration. ~~A Complaint's substance prevails over the~~
 28 ~~form.~~

29 ~~(d)~~ **(de) Initial investigation**Summary Review. Upon receiving a Complaint, the OPC will
 30 conduct a preliminary ~~investigation~~review to ~~ascertain~~determine whether the
 31 ~~Complaint's~~Complaint includes allegations that, if proved, would constitute grounds for
 32 discipline and, if so, whether the Complaint should be investigated further. If the
 33 Complaint does not include allegations that, if proved, would constitute grounds for
 34 discipline, the OPC will dismiss the Complaint. The OPC may also decline to prosecute
 35 the Complaint under paragraph (g)(2). ~~are~~If a Complaint's allegations are not sufficiently
 36 clear. ~~If the allegations are not sufficiently clear,~~ the OPC ~~may~~will seek additional ~~facts~~
 37 information from the Complainant, ~~who must, upon the OPC's request, submit~~
 38 ~~documents or writings containing any additional facts.~~ If the Complainant does not
 39 respond to the OPC's request or does not have additional evidence, the OPC may dismiss
 40 the Complaint. Absent extraordinary circumstances, ~~W~~within three months after ~~filing~~a
 41 Complaint is filed, the OPC ~~must~~will advise the Complainant ~~concerning the initial~~
 42 ~~investigation of~~about the status of the Complaint.

43 **(e) OPC investigation.** If the OPC determines that a Complaint warrants further
 44 investigation, the OPC may seek additional information from the Complainant, the
 45 Respondent, or a third-party witness. The OPC may also request permission to issue an
 46 investigative subpoena under Rule 1-523.

47 ~~(d) Referral to Professionalism and Civility Counseling Board.~~ ~~The OPC may in~~
 48 ~~connection with any conduct that comes to its attention refer any matter to the~~
 49 ~~Professionalism and Civility Counseling Board established under Rule 14-30314-303.~~ ~~Such~~
 50 ~~referral may be in addition to or in lieu of any further proceedings related to the subject~~
 51 ~~matter of the referral. Such referral should be in writing and at the discretion of the~~
 52 ~~OPC may include any or all information included in the Complaint or additional facts~~
 53 ~~submitted by the Complainant.~~

54 (fe) **Notice to Respondent.** Upon completing the preliminary investigation, the OPC will
 55 determine whether, in the interest of the Complainant, the Respondent, and the public,
 56 the Complaint can be resolved ~~in the public interest, the Respondent’s interest, and the~~
 57 ~~Complainant’s interest~~ without the involvement of a screening panel. If the Complaint
 58 cannot be resolved or if it alleges facts that, by their very nature, should be brought before
 59 the screening panel, or if good cause otherwise exists to bring the matter before the
 60 screening panel, the OPC must:

61 (1) ~~serve the Respondent with~~ prepare a Notice identifying with particularity the
 62 possible violation(s) of the Rules of Professional Conduct ~~or Licensed Paralegal~~
 63 ~~Practitioner Rules of Professional Conduct~~ raised by the Complaint as the OPC has
 64 preliminarily determined;

65 (2) attach a copy of the file assembled by the OPC ~~signed Complaint~~; and

66 (3) ~~mail~~ serve the documents ~~to the Respondent’s address as reflected in the Bar’s~~
 67 ~~records~~ on the Respondent, with a copy to the Complainant.

68 (gf) **Answer to Notice Complaint.** Within 21 days after the Respondent is served with the
 69 ~~Complaint and~~ Notice, the Respondent must file with the OPC a signed, written answer
 70 responding to the claims of possible misconduct and including any relevant facts or
 71 defenses. ~~explaining the facts surrounding the Complaint, together with all defenses and~~
 72 ~~responses to the claims of possible misconduct.~~ If a request is made before the time to file
 73 an answer has expired, For good cause, the OPC may, for good cause, extend the time for
 74 filing an answer ~~not to exceed~~ by an additional 28 days. ~~After~~ When the answer is filed or
 75 after the time for filing an answer has expired ~~if the Respondent fails to respond,~~ the OPC
 76 will either dismiss the Complaint or refer the case to a screening panel ~~to make a~~
 77 ~~determination or recommendation~~ for a hearing. The OPC must forward a copy of the
 78 answer to the Complainant.

79 (hd) **Referral to Professionalism and Civility Counseling Board.** The OPC may ~~—in~~
 80 ~~connection with any conduct that comes to its attention~~ —refer any matter that comes to

81 its attention to the Professionalism and Civility Counseling Board established under Rule
 82 14-303. ~~Such~~That referral may be in addition to or in lieu~~instead~~ of any other~~further~~
 83 proceedings related to the subject matter of the referral. ~~Such~~The referral should~~must~~ be
 84 in writing and – at the discretion of the OPC’s discretion – may include any or all
 85 information included in the Complaint or additional facts submitted by the Complainant.

86 ~~(g)~~ **Dismissal; declination to prosecute; notification; new evidence**~~ing the Complaint.~~

87 (1) ~~Reasons for d~~**Dismissal**. The OPC may dismiss a Complaint without referral to a
 88 screening panel hearing if the OPC determines the Complaint is:

89 (A) frivolous, unintelligible, unsupported by fact, or fails to raise probable cause
 90 of any ~~un~~professional misconduct; or

91 (B) barred by the statute of limitations;

92 ~~(C) more adequately addressed in another forum; or~~

93 ~~(D) one in which the OPC declines to prosecute.~~

94 (2) **Declination to prosecute**. In its discretion, the OPC may decline to prosecute a
 95 Complaint without referral to a screening panel hearing, including when:

96 (A) the Complaint’s allegations would be more adequately addressed in another
 97 forum;

98 (B) a previous sanction for similar misconduct within the past two years obviates
 99 the need for an additional sanction;

100 (C) the Respondent has remedied the alleged misconduct and little or no harm
 101 resulted from the alleged misconduct;

102 (D) the alleged violation is merely technical or the result of a simple mistake and
 103 little or no harm resulted from the alleged misconduct;

104 (E) the OPC lacks adequate resources to thoroughly investigate the Complaint’s
 105 allegations; or

106 (F) the Complainant appears to be primarily motivated by a desire to harm an
 107 opposing party or obtain a strategic advantage in litigation.

108 (3) Letter of Caution. When the OPC dismisses or declines to prosecute a Complaint,
 109 it may issue a letter of caution to the Respondent.

110 (4) Notification ~~and appeal.~~ (A) When the OPC dismisses or declines to prosecute a
 111 Complaint, it must:

112 (A*i*) notify the Complainant and the Respondent that the OPC has dismissed or
 113 decline to prosecute the Complaint;

114 (B*ii*) state the reasons for dismissal or declination to prosecute; and

115 (C*iii*) include a notice of the Complainant’s right to appeal an OPC ~~decision~~
 116 dismissal or declination to the Committee chair.

117 (5) New evidence. If the Complainant acquires new evidence material to a potential
 118 violation of the Rules of Professional Conduct following the OPC’s dismissal or
 119 declination to prosecute, the Complainant may file a new complaint with the OPC.

120 (j) Appeal of dismissal or declination to prosecute.

121 (1B) The Complainant may appeal ~~a~~the dismissal or declination to prosecute by ~~filing~~
 122 submitting an appeal of no more than five pages to ~~with~~ the Committee clerk, with
 123 ~~and serving~~ a copy ~~of the appeal on~~ to the OPC, within 21 days after the dismissal or
 124 ~~declination~~ ~~notification~~ is ~~mailed~~ served.

125 (2E) The Complainant carries the burden of persuasion on appeal. The appeal must
 126 identify any aspect(s) of the dismissal that the Complainant believes is erroneous. If
 127 the OPC determined that the Complaint was unsupported by fact, the appeal must
 128 identify evidence in the file that supports the allegations in the Complaint.

129 (3) The Complainant may, for good cause shown, seek from the Committee chair
 130 additional time to file an appeal or leave to include additional pages in the appeal.

131 (4) The Committee chair’s review of the file on appeal will be limited to the file
 132 assembled by the OPC and any publicly-available court dockets or filings.

133 (5) The Committee chair will reverse the OPC’s declination to prosecute a Complaint
 134 only upon finding an abuse of discretion.

135 (6) The Committee chair will reverse the OPC’s dismissal of a Complaint when:

136 (A) the facts material to a potential violation of the Rules of Professional Conduct
 137 are in genuine dispute;

138 (B) the OPC failed to address allegations that, if proven, would be sufficient to
 139 establish probable cause of a violation of the Rules of Professional Conduct; or

140 (C) the Complainant demonstrates that the OPC erred in some other material
 141 respect.

142 (7) After review, the Committee chair may:

143 (A) affirm the dismissal or declination;

144 (B) affirm the dismissal or declination with a letter of caution to the Respondent;

145 (C) reverse the dismissal or declination and require the OPC to conduct additional
 146 investigation; or

147 (D) reverse the dismissal or declination and require the OPC to serve ~~the~~
 148 ~~Committee chair or a vice chair will conduct a de novo review of the file, either~~
 149 ~~affirm the dismissal or require the OPC to prepare~~ a Notice (if no Notice has been
 150 ~~served~~necessary), and set the matter for hearing by a screening panel. ~~If the chair~~
 151 ~~recuses, the chair will appoint the vice chair or one of the screening panel chairs to~~
 152 ~~review and determine the appeal.~~

153 (8) If the Committee chair reverses and requires the OPC to conduct additional
 154 investigation, the OPC may, after conducting the additional investigation, dismiss the
 155 Complaint, decline to prosecute, or prepare a Notice and set the matter for hearing by

156 a screening panel. If the OPC dismisses or declines to prosecute, the Complainant may
 157 appeal under paragraph (j)(1).

158 (9) In addition to or instead of affirming or reversing the dismissal or declination, the
 159 Committee chair may refer a matter to the Professionalism and Civility Counseling
 160 Board.

161 (10) If the Committee chair recuses, the Committee chair will appoint thea Committee
 162 vice chair or ~~one of the~~ a screening panel chairs to review and determine the appeal.