

Rule 1-530. Professional misconduct proceedings.

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

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

(1) If a person initiates the Complaint, filing is complete when the Complaint is ~~delivered~~sent to the OPC office ~~in hard copy or electronic form~~ or is electronically filed through the OPC's website at opcutah.org.

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

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

(c) Complaint form.

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

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

(3) The Complaint must contain an unsworn declaration that complies with Utah Code section 78B-18a-106 declaring that the information in the Complaint is true and correct. Complaints filed by the OPC do not need such a declaration.

(d) **Summary review.** Upon receiving a Complaint, the OPC will conduct a summary review to determine whether the Complaint includes allegations that, if proved, would constitute grounds for discipline and, if so, whether the Complaint should be investigated further. If the Complaint does not include allegations that, if proved, would constitute grounds for discipline, the OPC will dismiss the Complaint. The OPC also may ~~also~~ decline to prosecute the Complaint under paragraph (g)(2). If a Complaint's allegations are not sufficiently clear, the OPC may seek additional information from the Complainant. If the Complainant does not respond to the OPC's request or does not have additional evidence, the OPC may dismiss the Complaint. Absent extraordinary circumstances, within three months after a Complaint is filed, the OPC will advise the Complainant about the status of the Complaint.

(e) **OPC investigation.** If the OPC determines that a Complaint warrants further investigation, the OPC may seek additional information from the Complainant, the Respondent, or third-party witnesses. The OPC also may ~~also~~ request permission to issue investigative subpoenas under [Rule 1-523](#).

(f) **Notice to Respondent.** Upon completing the summary review, the OPC will determine whether, in the interest of the Complainant, the Respondent, and the public, the Complaint can be resolved without the involvement of a screening panel. If the Complaint cannot be resolved or if it alleges facts that, by their very nature, should be brought before the screening panel, or if good cause otherwise exists to bring the matter before the screening panel, the OPC must:

(1) prepare a Notice identifying with particularity the possible violation(s) of the Rules of Professional Conduct raised by the Complaint as the OPC has preliminarily determined;

(2) attach a copy of the file assembled by the OPC; and

(3) serve the documents on the Respondent, with a copy to the Complainant.

(g) **Answer to Notice.** Within 21 days after the Respondent is served with the Notice, the Respondent must file with the OPC a signed, written answer responding to the claims of possible misconduct and including any relevant facts or defenses. If a request is made before the time to file an answer has expired, the OPC may, for good cause, extend the time for filing an answer by an additional 28 days. After the answer is filed or after the time for filing an answer has expired, the OPC will either dismiss the Complaint or refer the case to a screening panel for a hearing. The OPC must forward a copy of the answer to the Complainant.

(h) **Referral to Professionalism and Civility Counseling Board.** The OPC may refer any matter that comes to its attention to the Professionalism and Civility Counseling Board established under [Rule 4-303](#). That referral may be in addition to or instead of any other proceedings related to the subject matter of the referral. The referral must be in writing and—at the OPC’s discretion—may include any information submitted by the Complainant.

(i) **Dismissal; declination to prosecute; notification; new evidence.**

(1) **Dismissal.** The OPC may dismiss a Complaint without referral to a screening panel hearing if the OPC determines the Complaint is:

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

(B) barred by the statute of limitations.

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

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

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

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

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

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

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

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

(4) **Notification.** When the OPC dismisses or declines to prosecute a Complaint, it must:

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

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

(C) include a notice of the Complainant's right to appeal an OPC dismissal or declination to the Committee chair.

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

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

(1) The Complainant may appeal a dismissal or declination to prosecute by submitting an appeal of no more than five pages to the Committee clerk, with a copy to the OPC, within 21 days after the dismissal or declination is ~~served~~sent.

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

(3) The Committee chair may delegate any appeal to a Committee vice chair or screening panel chair. In the event of a recusal, the appeal will be handled by a Committee vice chair or screening panel chair selected at random by the Committee clerk.

~~(34)~~ The Complainant may, for good cause shown, seek from the ~~Committee~~ chair additional time to file an appeal or leave to include additional pages in the appeal.

~~(45)~~ The ~~Committee~~ chair's review ~~of the file on appeal~~ will be limited to the Complainant's appeal, the file assembled by the OPC, and any publicly-available court dockets or filings.

~~(56)~~ The ~~Committee~~ chair will reverse the OPC's declination to prosecute a Complaint only upon finding an abuse of discretion.

~~(67)~~ The ~~Committee~~ chair will reverse the OPC's dismissal of a Complaint when:

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

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

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

~~(78)~~ After review, the ~~Committee~~ chair may:

(A) affirm the dismissal or declination;

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

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

(D) reverse the dismissal or declination and require the OPC to serve a Notice (if no Notice has been served) and set the matter for hearing by a screening panel.

~~(E) The chair's decision on appeal under this rule is final and is not subject to further review.~~

~~(9)~~ ⁸ If the ~~Committee~~ chair reverses and requires the OPC to conduct additional investigation, the OPC may, after conducting the additional investigation, dismiss the Complaint, decline to prosecute, or prepare a Notice and set the matter for hearing by a screening panel. If the OPC dismisses or declines to prosecute, the Complainant may appeal under paragraph (j)(1).

~~(10)~~ ⁹ In addition to or instead of affirming or reversing the dismissal or declination, the ~~Committee~~ chair may refer a matter to the Professionalism and Civility Counseling Board.

~~(10) If the Committee chair recuses, the Committee chair will appoint a Committee vice chair or a screening panel chair to review and determine the appeal.~~