

Rule 14-503. Ethics and Discipline Committee.

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(a) Composition. The Committee shall be appointed by the Supreme Court. The Committee shall consist of eight public members and 267 members of the Bar who have demonstrated a high standard of professional conduct. All appointments shall be for a term of three years. The Supreme Court shall designate one lawyer member as Committee chair; and one lawyer member as Committee vice chair; and one lawyer member as a second Committee vice chair. Committee members shall not serve more than two consecutive terms.

(b) Committee chair. The Committee chair shall supervise the Committee and screening panels. The chair is responsible to maintain an adequate check on the work of the screening panels to ensure that matters move forward expeditiously, to determine that screening panels have a uniform basis for the judgments rendered, and to provide the screening panels with information concerning ethics and judicial decisions necessary to their activities. The chair shall make recommendations to the Supreme Court concerning appointments to and removals from the screening panels and reports concerning the activities of the screening panels and the overall work of the Committee.

(c) Vice chairs. The Committee vice chairs shall act in the event of the chair's absence or resignation. In the event of the chair's absence or resignation, a vice chair will become the chair. The chair may call upon the either vice chair to assist in any of the Committee chair's duties.

(d) Screening panels, quorums. The Committee members, except for the Committee chair and Committee vice chairs, shall be divided into four screening panel sections of six members of the Bar and two public members. The Supreme Court shall name a screening panel chair from each screening panel, who shall preside over the screening panel. In the absence of the screening panel chair, a screening panel vice chair designated by the screening panel shall preside. Two members of the Bar plus one public member shall constitute a quorum of a screening panel. The concurrence of a majority of those members present and voting at any proceeding shall be required for a screening panel determination. If an even number of screening panel members participate in a proceeding, the chair or vice chair shall not vote unless necessary to break a tie. The chair or vice chair shall, however, fully participate in the proceeding. Each screening panel shall meet as is necessary to effectively and promptly carry out its duties. The entire Committee may be convened at such other times by the chair as necessary to effectively and promptly carry out its duties.

(e) ~~Resignations~~ Removal, alternates. The Committee chair may recommend removal of a Committee member by notifying the Supreme Court of the recommendation of removal and reasons for the recommendation. The removal shall take effect upon the Supreme Court's acceptance of the recommendation. ~~If a Committee member does not attend three consecutive scheduled screening~~

panel hearings, that Committee member shall automatically be deemed to have resigned his or her Committee appointment. Members of any screening panel may serve as alternate members on different screening panels. The Committee chair and the Committee vice chairs may serve as alternate members on all screening panels.

(f) Responsibilities. Informal complaints shall be randomly assigned to screening panels. The screening panels shall review, investigate, and hear all informal complaints charging unethical and/or unprofessional conduct against members of the Bar. After such review, investigation, hearing and analysis, the screening panels shall determine the action to be taken on any informal complaint which, based upon the facts of the particular case, is most consistent with the public interest and the Rules of Professional Conduct.

(g) Subpoena. Any party or a screening panel, for good cause shown, may petition under seal the district court for issuance of a subpoena, subpoena duces tecum or any order allowing discovery prior to the filing of a formal complaint. Except for good cause shown, all petitions under this rule shall require a five-day written notice to the opposing party prior to the issuance of an appropriate order of subpoena.

(g)(1) Enforcement of subpoena. A district court in the district in which the attendance or production is required may, upon proper application, enforce the attendance and testimony of any witnesses and the production of any documents subpoenaed.

(g)(2) Quashing subpoena. Any attack on the validity of a subpoena so issued shall be heard and determined by the Committee chair or by the court wherein enforcement of the subpoena is being sought. Any resulting order is not appealable prior to the entry of a final order in the proceeding.

(g)(3) Witnesses and fees. Subpoena fees, witness fees, and mileage shall be reimbursed in the amounts provided under Rule 45 of the Utah Rules of Civil Procedure.

(h)(1) Committee and OPC as screening panel secretary. OPC counsel shall be the secretary to the Committee and is charged with the responsibility of the administrative affairs of the Committee, the handling of the screening panel calendars, giving notice to screening panel members and members of the Bar whose attendance is requested, notifying those who have filed informal complaints of the times and dates their matters will be heard, and otherwise performing or providing the secretarial and administrative functions of the Committee and screening panels. Except as otherwise provided in this article, whenever OPC counsel may be present before a screening panel during a hearing, the respondent may also be present.

(h)(2) OPC counsel shall within three months after the filing of an informal complaint of unprofessional or unethical conduct of a respondent, advise the party making the informal complaint concerning the initial consideration of the informal complaint, and shall promptly advise such party in writing of the subsequent disposition of the informal complaint and the reasons therefor.

(i) Annual report. Senior counsel shall prepare and submit an annual report to the Supreme Court and the Board encompassing the scope and nature of the Committee work. The report shall be submitted on or about August 1 of each year for the preceding fiscal year and shall set forth the number of disciplinary cases investigated, the number brought before the Committee, formal complaints filed, dispositions, cases dismissed, informal ethics opinions issued, diversionary dispositions and such other information as may be helpful to the Supreme Court in comprehending the operations of the OPC as well as the efficiency and effectiveness of the disciplinary system. Such report may contain Committee recommendations for rule amendments or changes in Committee procedure. The chair and senior counsel shall annually consult with the Board and the Supreme Court regarding the level of activity and general standing of disciplinary matters and procedures.

Rule 14-510. Prosecution and appeals.

a) Informal complaint of unprofessional conduct.

(a)(1) Filing. A disciplinary proceeding may be initiated against any member of the Bar by any person, OPC counsel or the Committee, by filing with the Bar, in writing, an informal complaint in ordinary, plain and concise language setting forth the acts or omissions claimed to constitute unprofessional conduct. Upon filing, an informal complaint shall be processed in accordance with this article.

(a)(2) Form of informal complaint. The informal complaint need not be in any particular form or style and may be by letter or other informal writing, although a form may be provided by the OPC to standardize the informal complaint format. It is unnecessary that the informal complaint recite disciplinary rules, ethical canons or a prayer requesting specific disciplinary action. The informal complaint shall be signed by the complainant and shall set forth the complainant's address, and may list the names and addresses of other witnesses. The informal complaint shall be notarized and contain a verification attesting to the accuracy of the information contained in the complaint. In accordance with Rule 14-504(b), complaints filed by OPC are not required to contain a verification. The substance of the informal complaint shall prevail over the form.

(a)(3) Initial investigation. Upon the filing of an informal complaint, OPC counsel shall conduct a preliminary investigation to ascertain whether the informal complaint is sufficiently clear as to its allegations. If it is not, OPC counsel shall seek additional facts from the complainant; additional facts shall also be submitted in writing and signed by the complainant.

(a)(4) Notice of informal complaint. Upon completion of the preliminary investigation, OPC counsel shall determine whether the informal complaint can be resolved in the public interest, the respondent's interest and the complainant's interest. OPC counsel and/or the screening panel may use their efforts to resolve the informal complaint. If the informal complaint cannot be so resolved or if it sets forth facts which, 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, OPC counsel shall cause to be served a NOIC by regular mail upon the respondent at the address reflected in the records of the Bar. The NOIC shall have attached a true copy of the signed informal complaint against the respondent and shall identify with particularity the possible violation(s) of the Rules of Professional Conduct raised by the informal complaint as preliminarily determined by OPC counsel.

(a)(5) Answer to informal complaint. Within 20 days after service of the NOIC on the respondent, the respondent shall file with OPC counsel a written and signed answer setting forth in full an explanation of the facts surrounding the informal complaint, together with all defenses and responses to the claims of possible

misconduct. For good cause shown, OPC counsel may extend the time for the filing of an answer by the respondent not to exceed an additional 30 days. Upon the answer having been filed or if the respondent fails to respond, OPC counsel shall refer the case to a screening panel for investigation, consideration and determination or recommendation. OPC counsel shall forward a copy of the answer to the complainant.

(a)(6) Dismissal of informal complaint. An informal complaint which, upon consideration of all factors, is determined by OPC counsel to be frivolous, unintelligible, barred by the statute of limitations, more adequately addressed in another forum, unsupported by fact or which does not raise probable cause of any unprofessional conduct, or which OPC declines to prosecute may be dismissed by OPC counsel without hearing by a screening panel. OPC counsel shall notify the complainant of such dismissal stating the reasons therefor. The complainant may appeal a dismissal by OPC counsel to the Committee chair within 15 days after notification of the dismissal is mailed. Upon appeal, the Committee chair shall conduct a de novo review of the file, either affirm the dismissal or require OPC counsel to prepare a NOIC, and set the matter for hearing by a screening panel. In the event of the chair's recusal, the chair shall appoint the vice chair or one of the screening panel chairs to review and determine the appeal.

(b) Proceedings before Committee and screening panels.

(b)(1) Review and investigation. A screening panel shall review all informal complaints referred to it by OPC counsel, including all the facts developed by the informal complaint, answer, investigation and hearing, and the recommendations of OPC counsel. In cases where there is a judicial officer's failure to address or report a respondent's alleged misconduct, the screening panel should not determine that this failure to address or report is evidence either that misconduct has occurred or has not occurred.

(b)(2) Respondent's appearance. Before any action is taken that may result in the recommendation of an admonition or public reprimand or the filing of a formal complaint, the screening panel shall, upon at least 30 days' notice, afford the respondent an opportunity to appear before the screening panel. Respondent and any witnesses called by the respondent may testify, and respondent may present oral argument with respect to the informal complaint. Respondent may also submit a written brief to the screening panel at least 10 days prior to the hearing, which shall not exceed 10 pages in length unless permission for enlargement is extended by the chair or the chair's delegate for good cause shown. A copy of the brief shall be forwarded by OPC counsel to the complainant.

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

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

(b)(5) Hearing Record. The proceedings of any hearing before a screening panel under this subsection (b) shall be recorded at a level of audio quality that permits an accurate transcription of the proceedings. Pursuant to its function as secretary to the Committee under Rule 14-503(h)(1), OPC shall be responsible for the assembly of the complete record of the proceedings, to be delivered to the chair of the Committee upon the rendering of the panel's determination or recommendation to the Committee chair. The record of the proceedings before the panel shall be preserved for not less than one year following delivery of the panel's determination or recommendation to the chair of the Committee and for such additional period as any further proceedings on the matter are pending or might be instituted under this section.

(b)(6) Screening panel determination or recommendation. Upon review of all the facts developed by the informal complaint, answer, investigation and hearing, the screening panel shall make one of the following determinations or recommendations:

(b)(6)(A) The preponderance of evidence presented does not establish that the respondent was engaged in unprofessional conduct, in which case the informal complaint shall be dismissed. OPC counsel shall promptly give notice of such dismissal by regular mail to the complainant and the respondent. A letter of caution may also be issued with the dismissal. The letter shall be signed by OPC counsel or the screening panel chair and shall serve as a guide for the future conduct of the respondent. The complainant shall also be confidentially notified of the caution;

(b)(6)(B) The informal complaint shall be referred to the Diversion Committee ~~to be processed in accordance with the provisions of Rule 14-533; for diversion. In this case, the specific material terms of the Diversion Contract agreed to by the respondent are to be recorded as a part of the screening panel record, along with any comments by the complainant. The screening panel shall have no further~~

involvement in processing the diversion. The Diversion Committee shall process the diversion in accordance with Rule 14-533.

(b)(6)(C) The informal complaint shall be referred to the Committee chair with an accompanying screening panel recommendation that the respondent be admonished;

(b)(6)(D) The informal complaint shall be referred to the Committee chair with an accompanying screening panel recommendation that the respondent receive a public reprimand; or

(b)(6)(E) A formal complaint shall be filed against the respondent pursuant to Rule 14-511.

(b)(7) Recommendation of admonition or public reprimand. A screening panel recommendation that the respondent should be disciplined under subsection (b)(6)(C) or (b)(6)(D) shall be in writing and shall state the substance and nature of the informal complaint and defenses and the basis upon which the screening panel has concluded, by a preponderance of the evidence, that the respondent should be admonished or publicly reprimanded. A copy of such screening panel recommendation shall be delivered to the Committee chair and a copy served upon the respondent.

(b)(8) Determination of appropriate sanction. In determining an appropriate sanction and only after having found unethical conduct, the screening panel may consider any admonitions or greater discipline imposed upon the respondent within the five years immediately preceding the alleged offense.

(b)(9) Continuance of disciplinary proceedings. A disciplinary proceeding may be held in abeyance by the Committee prior to the filing of a formal complaint when the allegations or the informal complaint contain matters of substantial similarity to the material allegations of pending criminal or civil litigation in which the respondent is involved.

(c) Exceptions to admonitions and public reprimands screening panel determinations and recommendations. Within 30 days after the date of the determination of a screening panel of a dismissal; dismissal with letter of caution; a referral to the Diversion Committee; or the recommendation of an admonition or the recommendation of a public reprimand OPC may file with the Committee chair exceptions to the determination or recommendation and may request a hearing. Within 30 days after service by OPC of the recommendation of an admonition or public reprimand on respondent, the respondent may file with the Committee chair exceptions to the recommendation and may request a hearing. No exception may be filed to a screening panel determination that a formal complaint shall be filed against a respondent pursuant to Rule 14-511. The All exceptions shall include a memorandum, not to exceed 20 pages, stating the

grounds for review, the relief requested and the bases in law or in fact for the exceptions.

(d) Procedure on exceptions.

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

(d)(2) Hearing requested. If a request for a hearing is made, the Committee chair or a screening panel chair designated by the Committee chair shall serve as the Exceptions Officer and hear the matter in an expeditious manner, with OPC counsel and the respondent having the opportunity to be present and give an oral presentation. The complainant need not appear personally. However, upon motion to the Exceptions Officer and for good cause shown, OPC or respondent may seek to augment the record before the screening panel or the original brief on exceptions, including:

(d)(2)(A) A request to call complainant as an adverse witness for purposes of cross-examination if complainant was not subject to direct cross-examination before the screening panel, and

(d)(2)(B) A request for time to obtain a transcript of the screening panel proceedings to support respondent's exceptions, the cost of such transcript to be borne by ~~respondent~~ the party requesting it. If a transcript is requested, OPC will provide the Committee chair with the transcript as transcribed by a court reporting service, together with an affidavit establishing the chain of custody of the record.

(d)(3) Burden of proof. The party who files exceptions under ~~A respondent who files exceptions under this subsection (d)~~ shall have the burden of showing that the determination or recommendation of the screening panel is unsupported by substantial evidence or is arbitrary, capricious, legally insufficient or otherwise clearly erroneous.

(d)(4) ~~OPC Response. The Exceptions Officer~~ The party opposing the exception may request ~~file a written response from OPC to exceptions filed by respondent within the time allowed by the Exceptions Officer.~~

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

(e) Final Committee disposition. Either upon the completion of the exceptions procedure under subsection (d) or if no exceptions have been filed ~~by respondent~~ under subsection (c), the Committee chair shall issue a final, written determination that either sustains, dismisses, or modifies the



~~disciplinary determination or recommendation of the screening panel. No final written determination is needed by the Committee chair to a screening panel determination of a dismissal, a dismissal with a letter of caution, or a referral to the Diversion Committee if no exception is filed. A modification of the screening panel's recommendation of discipline may not:~~

~~(e)(1) Be more severe than the original recommendation of the screening panel; nor~~

~~(e)(2) Require OPC to file a formal complaint under Rule 14-511.~~

~~(f) Appeal of a final Committee determination of admonition or public reprimand.~~

~~(f)(1) Within 30 days after service by OPC of a final, the date of a final, written determination of the Committee chair under subsection (c), OPC may file a request for a review by the Supreme Court seeking reversal or modification of the final determination of the Committee. Within 30 days after service by OPC of a final, written determination of the Committee Chair under subsection (c), the respondent of an admonition or a public reprimand in a matter for which exceptions have been filed by respondent under subsection (c), respondent may file a request for review with the Supreme Court seeking reversal or modification of the final determination by the Committee. A request for review under this subsection shall only be available in cases where exceptions have been filed under subsection (c). Dissemination of disciplinary information pursuant to Rules 14-504(b)(13) or 14-516 shall be automatically stayed during the period within which a request for review may be filed under this subsection. If a timely request for review is filed, the stay shall remain in place pending resolution by the Supreme Court unless the Court otherwise orders.~~

~~(f)(2) A request for review under this subsection (f) will be subject to the procedures set forth in Title III of the Utah Rules of Appellate Procedure.~~

~~(f)(3) A party requesting a transcription of the record below shall bear the costs. OPC will provide the Court with the transcript as transcribed by a court reporting service, together with an affidavit establishing the chain of custody of the record.~~

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

~~(f)(5) RespondentThe party requesting review shall have the burden of demonstrating that the Committee action was:~~

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

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

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

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

(g) General procedures.

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

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

(g)(3) Form of Documents. Documents submitted under this Rule shall conform to the requirements of Rules 27(a) and 27(b) of the Utah Rules of Appellate Procedure, except it is not required to bind documents along the left margin.

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Rule 14-533. Diversion.

(f) Diversion contract.

(f)(1) If the respondent agrees or elects to participate in diversion as provided by this rule, the terms of the diversion shall be set forth in a written contract. If the contract is entered prior to a hearing of a screening panel of the Ethics and Discipline Committee pursuant to Rule 14-510(b), the contract shall be between the respondent and OPC. If diversion is agreed to and entered after a screening panel of the Ethics and Discipline Committee has convened pursuant to Rule 14-510(b), the contract shall be made as part of the decision of that screening panel. As secretary to the screening panel, OPC will memorialize the contract and decision. If diversion is agreed to and entered after a complaint has been filed pursuant to Rule 14-512, the diversion contract shall be made as part of the ruling and order of the Court. Except as otherwise part of an order of a court, the Diversion Committee shall monitor and supervise the conditions of diversion and the terms of the diversion contract. The contract shall specify the program(s) to which the attorney shall be diverted, the general purpose of the diversion, the manner in which compliance is to be monitored, and any requirement for payment of restitution or cost. The respondent attorney shall bear the burden of drafting and submitting the proposed diversion contract. Respondent may utilize counsel to assist in the negotiation phase of diversion. Respondent may also utilize Bar benefits programs provided by the Bar, such as a lawyer assistance program to assist in developing terms and conditions for the diversion contract appropriate to that respondent's particular situation. Use of a lawyers assistance program to assess appropriate conditions for diversion shall not conflict that entity from providing services under the contract. The terms of each contract shall be specifically tailored to the respondent's individual circumstances. The contract is confidential and its terms shall not be disclosed to other than the parties to the contract.

(f)(2) All diversion contracts must contain at least all the following:

(f)(2)(A) the signatures of respondent, his counsel if any, and the chair of the Diversion Committee;

(f)(2)(B) the terms and conditions of the plan for respondent and, the identity, if appropriate, of any service provider, mentor, monitor and/or supervisor and that individual's specific responsibilities. If a professional or service is utilized, and it is necessary to disclose confidential information, respondent must sign a limited conditional waiver of confidentiality permitting the professional or service to make the necessary disclosures in order for the respondent to fulfill his duties under the contract;

(f)(2)(C) the necessary terms providing for oversight of fulfillment of the contract terms, including provisions for those involved to report any alleged breach of the contract to OPC;

(f)(2)(D) the necessary terms providing that respondent will pay all costs incurred in connection with the contract and those costs further specified pursuant to subsection (k) and any costs associated with the complaints to be deferred; and

(f)(2)(E) a specific acknowledgement that a material violation of a contract term renders the respondent's participation in diversion voidable by the chair of the Diversion Committee or his designee;

(f)(3) The contract may be amended on subsequent agreement of respondent and OPC.

(f)(4) The chair of the Ethics and Discipline Committee and OPC shall be given copies of every diversion contract entered and signed by the respondent and the Diversion Committee chair.