

# Agenda

## Utah Supreme Court Oversight Committee for the Office of Professional Conduct

June 19, 2019

4:00 p.m. to 5:30 p.m.

Scott M. Matheson Courthouse

450 State Street

Judicial Council Room

Administrative Office of the Courts, Suite N31

Welcome and approval of minutes	Tab 1	Judge Diana Hagen, Chair
Action Item: Consideration of public comments to Rule 14-515 and recommendation to the Supreme Court Conference	Tab 2	Cathy Dupont and Jeff Hunt (participant in working group that prepared the draft of Rule 14-515)
Action Item: OPC Budget – Revised The committee asked for additional line items in the budget and information from the Ethics and Discipline Committee. Approval of Budget	Tab 3	Billy Walker John Baldwin Jeff Hunt (for the Ethics and Discipline Committee)
Discussion: OPC ethics hotline		Billy Walker John Baldwin
Other Business		

Committee webpage: <https://www.utcourts.gov/utc/opc/>

Tab 1

**Utah Supreme Court Oversight Committee for the  
Office of Conduct for Legal Professionals  
Meeting**

**Minutes  
April 23, 2019  
Judicial Council Room  
Matheson Courthouse  
450 S. State St.  
Salt Lake City, Utah 84111  
4:00 p.m. - 5:00 p.m.**

**Attendees:**

Judge Diana Hagen, Chair  
John Baldwin  
Art Berger  
Margaret Plane  
Roger Smith  
Billy Walker  
Magistrate Judge Brooke Wells

**Staff:**

Cathy Dupont

**1. Welcome and Approval of Minutes: (Judge Diana Hagen)**

Judge Diana Hagen, Chair, welcomed the members and called the meeting to order.

**Motion:** Art Berger moved to approve the March 20, 2019 committee minutes. Magistrate Judge Brooke Wells seconded the motion and it passed unanimously.

**2. Update of Project Organization: (Cathy Dupont)**

Ms. Dupont distributed the OPC Oversight Committee Progress Report to the Committee and discussed the use of the progress report for updates to the Supreme Court. The progress report can be a tracking tool for the revised OPC rules. She also reported to the committee that the Bar, OPC, and staff will work on the rule revisions for consideration by the committee. The draft rules will include a notation in the margins that identify the OPC/ABA recommendation the proposed amendments address and other policies considerations for the committee.

John Baldwin provided an update on the Bar's actions to implement Recommendation 1.2 and 1.3 which is to help the public understand that OPC is not a part of the State Bar. John Baldwin reported that exterior signs say "Law and Justice Center". The building has 2 banners in front and 2 banners in back that say Utah State Bar. The committee discussed that the Bar banners provide notice that the State Bar is in the building and do not imply that OPC is part of the Bar. The Bar Commission is considering how to address the chrome lettering behind the receptionist desk. The receptionist answers the phone Utah Law and Justice Center and the elevators list tenants in the building.

Billy Walker reported that steps are being taken to separate the OPC website from the Utah Bar website.

**3. OPC Budget Overview: (John Baldwin)**

The committee considered the draft budget for the Office of Professional Conduct. Billy Walker mentioned that the budget does not include potential expenses that may be incurred as a result of changes in the OPC structure and discipline process. The committee discussed the need to include line items in the budget for software and hardware costs, and anticipated capital costs. The Bar and OPC will work on revising the budget and bring it back to the committee.

The committee wants to know if the Ethics and Discipline Committee Chair needs additional funding, in particular, for training of screening panel members. The committee decided to ask the Chair of the Ethics and Discipline Committee to report to the committee at the June meeting.

**4. Meeting Schedule**

The next meeting will be held on June 19, 2019 at 4 p.m. in the Judicial Council Room of the Matheson Courthouse.

**5. Adjournment**

The meeting was adjourned.

# Tab 2

1       **Rule 14-515. Access to disciplinary information.**

2       (a) Confidentiality. Prior to the filing of a formal complaint or the issuance of a public  
3 reprimand pursuant to Rule 14-510 in a discipline matter, OPC Counsel, OPC  
4 employees, the Committee, Committee volunteers, Committee staff, Committee  
5 employees, special counsel appointed pursuant to Rule 14-517(f), and special counsel  
6 employees or assistants, shall keep the proceeding ~~is~~ confidential, except that the  
7 pendency, subject matter, and status of an investigation may be disclosed by OPC  
8 counsel if the proceeding is based upon allegations that have been disseminated  
9 through the mass media, or include either the conviction of a crime or reciprocal public  
10 discipline. The proceeding shall not be deemed confidential to the extent:

11       (a)(1) the respondent has given an express written waiver of confidentiality;

12       (a)(2) there is a need to notify another person or organization, including the Bar's  
13 Lawyer's Fund for Client Protection, in order to protect the public, the administration of  
14 justice, or the legal profession; or

15       (a)(3) the information is required in a subsequent lawyer sanctions hearing;

16       (a)(4) a referral is made to the Professionalism Counseling Board pursuant to Rule  
17 14-510 (a)(4) or (b)(6)(C) . In the event of such a referral, OPC counsel, members of the  
18 Committee and of any screening panel, and members of the Professionalism  
19 Counseling Board may share all information between and among them with the  
20 expectation that such information will in all other respects be subject to applicable  
21 confidentiality rules or exceptions.

22       (b) Public proceedings. Upon the filing of a formal complaint in a discipline matter,  
23 the filing of a petition for reinstatement, or the filing of a motion or petition for interim  
24 suspension, the proceeding is public, except as provided in paragraph (d) below.

25       (c) Proceedings alleging disability. Proceedings for transfer to or from disability  
26 status are confidential. All orders transferring a respondent to or from disability status  
27 are public.

28       (d) Protective order. In order to protect the interest of a complainant, witness, third  
29 party, or respondent, the district court may, upon application of any person and for good

30 cause shown, issue a protective order prohibiting the disclosure of specific information  
31 and direct that the proceedings be conducted so as to implement the order, including  
32 requiring that the hearing be conducted in such a way as to preserve the confidentiality  
33 of the information that is the subject of the application.

34 (e) Request for nonpublic information. Nonpublic information shall be confidential,  
35 other than as authorized for disclosure under paragraph (a), unless:

36 (e)(1) the request for information is made by the Board, any Bar committee, a  
37 committee or consultant appointed by the Supreme Court or the Board to review OPC  
38 operations, or the executive director, and is required in the furtherance of their duties; or

39 (e)(2) the request for information is approved by OPC counsel and there is  
40 compliance with the provisions of paragraphs (f) and (g) of this rule.

41 (f) Notice to the respondent. Except as provided in paragraph (g), if the Committee  
42 decides to provide nonpublic information requested pursuant to paragraph (e), and if the  
43 respondent has not signed an express written waiver permitting the party requesting the  
44 information to obtain the nonpublic information, the respondent shall be notified in  
45 writing at the respondent's last known designated mailing address as shown by Bar  
46 records of that information which has been requested and by whom, together with a  
47 copy of the information proposed to be released. The notice shall advise the respondent  
48 that the information shall be released at the end of 21 days following mailing of the  
49 notice unless the respondent objects to the disclosure. If the respondent timely objects  
50 to the disclosure, the information shall remain confidential unless the requesting party  
51 obtains a court order authorizing its release.

52 (g) Release without notice. If a requesting party as outlined in paragraph (e)(2) has  
53 not obtained an express written waiver from the respondent to obtain nonpublic  
54 information, and requests that the information be released without giving notice to the  
55 respondent, the requesting party shall certify that:

56 (g)(1) the request is made in furtherance of an ongoing investigation into misconduct  
57 by the respondent;

58 (g)(2) the information is essential to that investigation; and

59 (g)(3) disclosure of the existence of the investigation to the respondent would  
60 seriously prejudice that investigation.

61 (h) OPC counsel can disclose nonpublic information without notice to the respondent  
62 if:

63 (h)(1) disclosure is made in furtherance of an ongoing OPC investigation into  
64 misconduct by the respondent; and

65 (h)(2) the information that is sought through disclosure is essential to that  
66 investigation.

67 (i) Duty of participants. ~~All participants~~ OPC Counsel, OPC employees, the  
68 Committee, Committee volunteers, Committee staff, Committee employees, special  
69 counsel appointed pursuant to Rule 14-517(f), and special counsel employees or  
70 assistants in a proceeding under these rules shall conduct themselves so as to maintain  
71 confidentiality. Except as authorized by other statutes or rules, persons receiving private  
72 records under paragraph (e) will not provide access to the records to anyone else.



Comments for CJA 14-515. Comment period closed June 2, 2019.

**John Boden**

**April 18, 2019 at 4:45 pm**

In this rule, balance must be found between the harm of ill-founded complaints made public, and the need for sunshine upon a healthy government. That balance lies in the time for Complainant to cool and the Respondent to offer a reply, so both sides might be made public simultaneously. It would work like this: Once a complaint is filed with the OPC, all parties are gagged to say anything until either Respondent has replied, or the time for such response has passed – whichever is sooner. That would aid in avoiding harmful bias in the press and community, while still allowing individuals to speak out regarding the matter in a timely manner.

**Scott Evans**

**April 18, 2019 at 7:11 pm**

Respectfully, I disagree with releasing the complainant from the obligation of confidentiality. Just last night I read an article in the Tribune (<https://www.sltrib.com/news/politics/2019/04/17/utah-bar-will-investigate/>) where an individual filed bar complaints against 7 attorneys and as soon as the individual received a confirmation of the complaint from the bar, she went to the Tribune reporter. The news article did not indicate whether the complainant had been represented by any of the 7 attorneys. However, it appeared that the basis for the complaint was not related to the representation of the claimant by any of the attorneys. This seemed odd to me and immediately caused me to question the motivation of the complainant.

Allowing a complainant to go public with the complaint would open the process up to significant abuses. For example, filing and publicizing bar complaints during a legal malpractice case to leverage a settlement; filing and publicizing a bar complaint against opposing counsel to leverage settlement or leverage counsel to withdraw from a case; filing bar complaints against lawyers who have no attorney client relationship simply to make life miserable or to leverage the lawyer to do, or not to do, something that is unrelated to the lawyer's profession. Obviously this is not exhaustive..

If we compare the proposed process to that of medical malpractice claims, the pre-litigation process is confidential and cannot be disclosed. Even actual DOPL complaints are supposed to be confidential. These are good policies. The rules governing bar complaints should not be different.

Finally, the Amendment does not identify any policy reason for the change. I can't really think of any good reason for it and am confident that the change will cause abusive bar complaints to increase.

Thank you. Please feel free to contact me if you have any questions.

**Todd Wahlquist**

**April 18, 2019 at 7:16 pm**

This amendment does not benefit anyone. The problem with the current rule is that it is unenforceable against a complainant. If they disclose confidential information during the pendency of an OPC investigation or during the Screening Panel process, there are no consequences. No one has jurisdiction over the complainant, therefore, nothing can be done about it. That being said, violations of the rule by complainants are rare. Society functions on people following the rules, even if no one is watching. The mere existence of the rule discourages complainants from disclosing confidential information. That will be gone with this amendment.

However, it removes the restriction without providing any benefit to the complainant. How does the complainant benefit by being able to disclose confidential information about the attorney discipline process?

It does not benefit the OPC or the Bar. If a complainant pursues a bar complaint, and it goes well in their mind, the attorney likely ends up with public discipline. The complainant gets some satisfaction from that. They got to tell their story, and some adjudicative body determined they were right. That's what they wanted. Those aren't the complainants that then get on social media. They might tell their family and friends about it, but they aren't going to write an op-ed piece in the paper or post an online comment. They already got their pound of flesh.

It is the complainant who got their case dismissed by the OPC or the Screening Panel that is going to feel the need to find another avenue of redress. They are the ones that are going to post online reviews and tweet about how they were mistreated by the system. They are going to talk about how the Bar is just protecting its own and how the system failed them. How does that benefit the Bar? Without the threat of a confidentiality rule, even a toothless one, complainants will be free to disclose information that otherwise would be confidential. The problem is that the information they are disclosing to support their contention of attorney misconduct is information that was determined by the OPC or the Screening Panel to be insufficient to support such a claim. While an attorney has the ability to defend themselves against meritless complaints brought to the OPC, there is nothing they can do when those same complaints are posted on social media after the complainant feels the OPC did not do its job. While rule 1.6 allows an attorney to disclose confidential information in the OPC process, if the attorney attempts to respond to a disparaging online statement that misrepresents the facts, they do not have that same freedom.

Exempting complainants from the confidentiality rule will simply open the door to online character attacks as a last means of redress for unsatisfied bar complainants.

It would seem that a simple cost/benefit analysis of this rule would argue against approving it. It harms the respondents, it harms the profession, it harms the Bar. It benefits no one.

The problem with the current rule is enforceability. Even if the OPC or a Screening Panel member violates the rule, then what?

**Doug Stowell**  
April 19, 2019 at 1:36 pm

I agree with Todd Wahlquist and Scott Evan's. I do not support this change.

**lmw**  
April 19, 2019 at 4:52 pm

Absolutely no reason for this provision. A FALSE claim was filed against someone I know, and the "confidentiality" provisions already in place meant that the complainants got to gossip all they wanted –within the Bar community–and NOBODY ever found out that the complaint was DISMISSED. It took so long that career damage appears irreparable. The procedure is already weighted in complainants' favor (as perhaps it should be), but to modify the rule to emphasize that complainants are free to publish whatever they want is a huge disservice to Bar members–particularly those whose reputations should not be sullied.

Concur with other opinions and their reasoning; felt must add this sad story.

**J. Bogart**  
May 13, 2019 at 7:43 am

I support the change. The current rule is of dubious constitutionality in limiting the free speech rights of the general public. There is no reason to insulate lawyers from risks every other sort of business faces.

# Tab 3

**Utah State Bar**  
**Preliminary FY2019 Budget**  
**Based on Actual Results through 3/31/19**  
**06 - Office of Prof Conduct**

	Actual FY 2017	Actual FY 2018	Projected FY 2019	Draft Budget FY 2020	\$ Change 2019 Projected vs 2020 Budget	% Change 2019 Projected vs 2020 Budget
<b>Revenue</b>						
4095 · Miscellaneous Income	2,980	5,059	6,555	6,686	131	2%
4200 · Seminar Profit/Loss	13,761	16,229	24,557	20,000	(4,557)	-19%
<b>Total Revenue</b>	<b>16,741</b>	<b>21,288</b>	<b>31,111</b>	<b>26,686</b>	<b>(4,425)</b>	<b>-14%</b>
<b>Expenses</b>						
<b>Program Services</b>						
5015 · Investigations	10	-	88	89	2	2%
5040 · Witness & Hearing Expense	10,024	1,733	2,186	5,000	2,814	129%
5041 · Process Serving	1,518	656	1,462	1,491	29	2%
5046 · Court Reporting	567	152	-	500	500	#DIV/0!
5075 · Food & Bev-external costs only	54	-	659	672	13	2%
5085 · Misc. Program Expense	-	420	240	245	5	2%
5702 · Travel - Lodging	6,422	3,911	6,076	6,197	122	2%
5703 · Travel - Transportation/Parking	1,760	1,768	2,892	2,950	58	2%
5704 · Travel - Mileage Reimbursement	733	1,309	2,566	2,617	51	2%
5705 · Travel - Per Diems	600	684	1,280	1,306	26	2%
5805 · ABA Annual Meeting	-	5,866	6,149	6,149	-	0%
5810 · ABA Mid Year Meeting	1,837	7,197	2,364	2,364	-	0%
<b>Total Program Services Expenses</b>	<b>24,485</b>	<b>24,347</b>	<b>25,962</b>	<b>29,581</b>	<b>3,619</b>	<b>14%</b>
<b>Salaries &amp; Benefits</b>						
5510 · Salaries/Wages	863,085	881,043	919,372	965,341	45,969	5%
5605 · Payroll Taxes	64,118	64,622	68,072	71,475	3,404	5%
5610 · Health Insurance	83,981	78,987	76,504	80,329	3,825	5%
5620 · Health Ins/Medical Reimb	-	941	1,242	1,304	62	5%
5630 · Dental Insurance	5,948	5,682	5,934	6,231	297	5%
5640 · Life & LTD Insurance	5,961	5,624	5,621	5,902	281	5%
5650 · Retirement Plan Contributions	83,557	78,849	83,448	87,621	4,172	5%
5655 · Retirement Plan Fees & Costs	6,838	6,558	4,896	5,141	245	5%
5660 · Training/Development	8,573	6,385	5,540	10,000	4,460	81%
<b>Total Salaries/Benefit Expenses</b>	<b>1,122,060</b>	<b>1,128,691</b>	<b>1,170,629</b>	<b>1,233,344</b>	<b>62,714</b>	<b>5%</b>
<b>General &amp; Administrative</b>						
7025 · Office Supplies	5,386	5,135	5,514	5,514	-	0%
7035 · Postage/Mailing, net	5,646	5,630	5,310	5,310	-	0%
7040 · Copy/Printing Expense	15,688	14,665	13,850	13,850	-	0%
7045 · Internet Service	-	-	72	72	-	0%
7050 · Computer Maintenance	2,824	2,824	3,154	3,249	95	3%
7055 · Computer Supplies & Small Equip	924	589	1,648	1,697	49	3%
7089 · Membership Database Fees	6,848	8,087	11,133	11,133	-	0%
7100 · Telephone	15,833	12,937	12,660	12,660	-	0%
7105 · Advertising	75	360	225	225	-	0%
7106 · Public Notification	703	608	1,225	1,225	-	0%
7110 · Publications/Subscriptions	11,239	10,328	10,380	10,380	-	0%
7120 · Membership/Dues	4,520	4,810	4,800	4,800	-	0%
7150 · E&O/Off & Dir Insurance	13,861	14,253	14,309	14,738	429	3%
7175 · O/S Consultants	-	-	1,365	21,365	20,000	1466%
7178 · Offsite Storage/Backup	3,995	4,228	4,681	4,681	-	0%
7195 · Other Gen & Adm Expense	800	-	285	285	-	0%
<b>Total General &amp; Administrative Expenses</b>	<b>88,585</b>	<b>85,437</b>	<b>90,612</b>	<b>111,186</b>	<b>20,574</b>	<b>23%</b>
<b>Building Overhead</b>						
6015 · Janitorial Expense	6,280	6,037	5,611	5,779	168	3%
6020 · Heat	3,664	4,275	4,044	4,166	121	3%
6025 · Electricity	10,035	8,838	8,570	8,827	257	3%
6030 · Water/Sewer	1,076	1,095	1,375	1,416	41	3%
6035 · Outside Maintenance	2,871	2,395	2,569	2,646	77	3%
6040 · Building Repairs	6,769	1,970	3,811	3,925	114	3%
6045 · Bldg Mtncce Contracts	7,932	7,767	6,469	6,663	194	3%
6050 · Bldg Mtncce Supplies	499	1,019	834	859	25	3%

**Utah State Bar**  
**Preliminary FY2019 Budget**  
**Based on Actual Results through 3/31/19**  
**06 - Office of Prof Conduct**

	Actual FY 2017	Actual FY 2018	Projected FY 2019	Draft Budget FY 2020	\$ Change 2019 Projected vs 2020 Budget	% Change 2019 Projected vs 2020 Budget
6065 - Bldg Insurance/Fees	3,348	3,298	3,209	3,306	96	3%
6070 - Building & Improvements Depre	10,948	10,344	9,864	10,160	296	3%
6075 - Furniture & Fixtures Depre	3,200	3,121	2,669	2,749	80	3%
7065 - Computers, Equip & Sftwre Depr	34,674	35,185	32,692	33,673	981	3%
Total Building Overhead Expenses	91,295	85,342	81,717	84,169	2,452	3%
Total Expenses	1,326,424	1,323,817	1,368,920	1,458,279	89,359	7%
<b>Net Profit (Loss)</b>	<b>\$ (1,309,683)</b>	<b>\$ (1,302,529)</b>	<b>\$ (1,337,809)</b>	<b>\$ (1,431,594)</b>	<b>\$ (93,784)</b>	<b>7%</b>

**NOTES TO OPC BUDGET:**

1 The following computer or IT maintenance contracts have been included in the FY 19/20 budget above for account 7050 - Computer Maintenance and account 7175 - O/S Consultants

Vendor/Contract	Amount	Purpose
Braintrace	\$668/month	Threat traffic monitoring
Euclid	\$236/month	Annual maintenance
ClearLink	\$1,417/month	Computer virus protection, routine computer updates and server, workstation & network maintenance
ClearLink	\$88/quarter	Vulnerability scans
ClearLink	\$1,188/year	Firewall maintenance
ClearLink	\$540/month	Office 365 Windows subscription

2 The Bar currently pays the monthly contract for Office 365 Windows monthly support totaling \$1,067/month, of which approximately \$351 relates to OPC.

3 No major software upgrades are expected for the FY 19/20 for OPC.

4 The \$20,000 increase in FY 19/20 Budget in account 7175 - O/S Consultants above relates to expected website costs related to the OPC website that will be created to separate OPC from the Bar's website

5 For FY 19/20, the following computer/hardware purchases are expected and will be capitalized:

Item	Amount
3 computers/laptops	\$ 6,500
printer	\$ 3,000

6 Each year, the Bar anticipates an operational reserve of \$200,000. Of that reserve, \$25,000 has been allocated to OPC.

7 Approximately 50% of the The General Counsel Assistant's time is spent on disciplinary matters, which totals approximately \$22,700 per year. Currently, the entire cost is charged to the General Counsel department and no expense related to the General Counsel Assistant is charged to OPC.

8 Any disciplinary-related expenses billed to General Counsel remain as a General Counsel expense and are not charged to OPC.