



## Agenda

### Utah Supreme Court's Oversight Committee For the Office of Professional Conduct

*Art Berger, Chair*

Location: Webex (see calendar appointment for instructions)  
Date: October 17, 2022  
Time: 4:00 to 5:30 p.m.

<b>Action:</b> Welcome and approval of April 25, 2022 Minutes	Tab 1	Art Berger, Chair
<b>Discussion:</b> Comments received on Rules 11-581 to 11-586	Tab 2	Art Berger
<b>Action:</b> Rules 11-581 to 11-586	Tab 3	Art Berger
<b>Discussion:</b> Needs Assessment/Funding Proposal Utah Code of Judicial Administration- Section 11-503	Tab 4	Art Berger, Billy Walker, Elizabeth Wright
<b>Discussion:</b> Old/new business		Art Berger, Chair

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

# Tab 1



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

### Draft Meeting Minutes

April 25, 2022

Via Webex

4:00–5:30 p.m.

*Judge Diana Hagen, presiding*

#### **Attendees:**

Judge Diana Hagen, Chair  
Magistrate Judge Brooke Wells  
Art Berger  
Roger Smith  
Margaret Plane  
Elizabeth Wright, Ex-officio member

#### **Guests:**

Billy Walker, Office of Professional Conduct  
Christine Greenwood, Ethics and Discipline Committee  
Nancy Sylvester, General Counsel, Utah State Bar  
Lauren Stout, Director of Finance, Utah State Bar

#### **Staff:**

Marina Kelaidis, Recording Secretary  
Nick Stiles, Staff, Appellate Court Administrator

### **1. Welcome and approval of the January 24, 2022 minutes:** (Judge Diana Hagen)

Judge Diana Hagen welcomed everyone to the meeting and asked for approval of the minutes.

*Margaret Plane moved to approve the January 24, 2022 minutes. Art Berger seconded the motion, and it passed unanimously.*

### **2. Discussion and Action—Proposed Rule 11-506: Relationship to the Utah State Bar:** (Nancy Sylvester, Elizabeth Wright, Billy Walker)

Nancy Sylvester gave a brief overview of the proposed rule. Ms. Plane recommended removing “informal” from paragraph (b)(1) and the committee agreed. The Committee discussed the potential limiting nature of paragraph (c) and recommended either removing or amending the paragraph. Ms. Sylvester will work on this section and circulate a proposed rule to the Committee via email for a vote.

Christine Johnson asked the Committee if the Ethics and Discipline Committee would be represented by the Bar’s General Counsel or the Administrative Office of the Court’s General Counsel in an instance of legal action. Ms. Johnson also inquired if it would be helpful to include language identifying this administrative function in the rule. The Committee and the Bar members will research and discuss this further before making a recommendation on the proposed provision.

**3. Discussion—Update on Presumptive Sanction Rules 11-581–11-586:** (Judge Diana Hagen)

Judge Hagen reported the Presumptive Sanction Rules are now published for public comment and a few comments have already been posted. The comment period closes May 12, 2022. The Committee will discuss all comments at the next meeting.

**4. Discussion—Review OPC Annual Report** (Judge Diana Hagen, Billy Walker)

Billy Walker provided an in-depth overview of the Annual Report. Judge Hagen expressed the report generally shows an increase in efficiency over the last year and asked if the data reflects increased efficiency, or if the year comparisons are too dissimilar to compare. Mr. Walker reported there has been an overall increase in efficiency and that it is likely due to the recent rule changes, specifically regarding the summary review process.

**5. Discussion and Action—Review and approve OPC proposed budget:** (Judge Diana Hagen, Billy Walker)

Billy Walker and Lauren Stout provided an in-depth overview of the proposed budget. Judge Hagen asked for clarification of item number 7110 Publications/Subscriptions. Ms. Stout explained this item is used to fund Lexis-Nexis, WebEx, UT Code and court rules resources. Roger Smith asked for clarification of the Total Program Services Expenses draft budget projected for FY 2023 and further if they had enough funds allocated for this section. Ms. Stout explained the OPC does not anticipate increasing travel and/or in-person meetings until around such time as December 2022/January 2023. In addition, OPC will likely continue to utilize virtual meetings when possible because about half of

all participants tend to prefer this option if available. Mr. Walker agreed and expressed the allocated expenses should be sufficient.

Judge Hagen requested an update on the programming costs approved at last year's budget meeting for item number 7089 Membership Database Fees. Mr. Walker reminded the Committee that we approved an additional \$10,000 at last year's meeting to allow for programming updates. Mr. Walker reported the programming company included these updates as part of their maintenance contract, so there were no additional expenses required to perform the updates. Mr. Berger asked for insight on the salary increases in item 5510. Elizabeth Wright reported the Bar last assessed their salary and wages in 2016 via a wage and salary review performed by a third-party accounting firm. The Bar will be executing another review as soon as possible to gather up to date data on appropriate wage and salary increases. In the interim, the OPC hopes the 5% increase will be sufficient to maintain low turnover rates.

*Roger Smith moved to approve the OPC's proposed budget. Judge Hagen seconded the motion, and it passed unanimously.*

**6. Other business—Schedule next meeting:**

The meeting adjourned at 5:30 p.m. The next meeting will be scheduled at a later date, to be determined.

# Tab 2

**1. Leslie Slaugh**  
**March 28, 2022 at 1:19 pm**

Proposed rule 11-0583(c)(1) recommends delicensure in three circumstances but applies different standards. Subparagraphs (A) and (B) require that the lawyer knows there is an adverse relationship. Subparagraph (C), in contract, only requires that the lawyer “knowingly uses information.” In other words, a lawyer could be disbarred under (c)(1)(C) if he/she was unaware of the conflict at the time of the action. That is a realistic possibility, especially if it is an imputed conflict resulting where another member of a firm represents the other client. Rule 11-0583(c)(1)(C) should be changed to permit delicensure only if the lawyer “represents a client in a matter substantially related to a matter in which ‘the lawyer knows’ the interests of a present or former client are materially adverse and . . . .”

**2. Tim Willardson**  
**March 28, 2022 at 1:20 pm**

The “presumptive” sanctions are a BAD idea for all of the same reasons that mandatory sentencing “guidelines” are a bad idea.

**3. Jennie Jonsson**  
**March 28, 2022 at 5:12 pm**

These amendments seem thoughtful and well designed to help address situations where individual attorneys need to improve their professional conduct. My comment is more general in nature. I recently attended a CLE where a representative from the OPC gave a presentation. The presenter explained that the OPC receives almost 4,000 reports/complaints a year and, in 2021, took action in only about 80 cases. The presenter interpreted that data to mean that, although attorneys make a lot of people upset, they very rarely violate the rules of professional conduct. I believe there is another interpretation. Among Utah attorneys, the OPC has a reputation for being extremely lenient. The sense is that you don’t file a complaint with the OPC for a solution, because the OPC will seize upon any possible excuse to dismiss your complaint. You file with the OPC simply to put a problem attorney on notice that the misconduct has been seen. The letters of dismissal that the OPC issues are absurd. The OPC does not investigate complaints. It does not evaluate credibility. In fact, in responding to a complaint, an attorney can flat-out lie. The OPC will then explain to the complainant that it cannot consider the complainant’s statements to be more credible than the respondent’s. Therefore, it cannot arrive at any conclusion. If that is the case, then the OPC is a waste of time and money. Further, if misconduct has occurred during a court proceeding, the OPC will state that the misconduct should have been addressed as part of that proceeding. Therefore, the OPC would require private litigants to keep their cases open and pay the costs of taking matters to trial in order to address attorney misconduct, even if the substantive elements of their cases can be settled. If the OPC can

find no other way to dismiss a complaint the OPC will create new rules. For example, my mother once asked an estate planning attorney for a copy of the documents he had prepared for her because she didn't remember what she had signed and didn't understand what the documents meant when she signed them. The attorney told her he would send the documents to her within 24 hours. He didn't. Then he told my mother that she could pick the documents up—at this point, I was helping my mother because she was on the phone with the attorney, and she is hard of hearing. She and I went to the office. She was then told that she could look at the documents while she was there, but she couldn't have copies. Then she was made to wait "while a room was prepared" for her. Then she was told she couldn't look at the documents after all or have copies. I filed a complaint with the OPC. It should have been a simple case—my mother asked for copies of her documents; the attorney refused to give them to her. But the OPC decided that, at some point, my mother's request for the documents expired—a brand new rule! At that point, it became my request rather than my mother's request, and the attorney was justified in refusing the request after it turned into my request. When I finally got the documents, I learned that the attorney had filed a quit claim deed after being placed on notice that my mother did not understand or remember what she had signed. I let the OPC know. The OPC did nothing. To be entirely candid, within the profession, the OPC is a joke.

4. **Alex Leeman**  
**May 6, 2022 at 8:07 am**

Proposed Rule 11-585(a) should not be limited only to instances where injury or potential injury is caused to parties to the proceeding. If a false statement causes injury or potential injury to a non-party, it should also be punishable, particularly because the non-party may not have the ability to address the matter with the court.

# Todd Wahlquist



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October 11, 2022

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Judge Laura Scott  
Roger Smith

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Re: *Rule 11-565 Discipline by Consent*

To The Supreme Court's Oversight Committee for the Office of Professional Conduct:

The purpose of my letter is to request that the OPC Oversight Committee consider an amendment to Rule 11-565 (Discipline By Consent). The concern is that the present rule allows a delay in the process that adversely, and unnecessarily, impacts respondents.

Before I get into the specifics of why I believe Rule 11-565 needs to be changed, allow me to provide some context. As this Committee knows, the Committee was created as a result of recommendations made in the ABA Report on the Utah Lawyer Discipline System.

One of the over-arching themes of the ABA's report was the amount of time it took to get disciplinary cases resolved. In its report, the ABA made 31 different recommendations for ways to improve the system. Addressing the cause of delays was specifically mentioned in 14 of those recommendations. Indeed, this Oversight Committee's very existence was seen by the ABA consultation team as a way to address this problem.

"The Discipline Committee believes that creating an Administrative Oversight Committee can serve an effective administrative role to help address delays and optimize the system's efficiency and timeliness."



ABA Report p. 40.

“The Oversight Committee can work with the Senior Counsel to identify where in the system the delays occur and take prompt action to address such concerns.”

ABA Report p. 40.

In addition to concerns about delay, the ABA also expressed concerns about the OPC’s approach to discipline by consent: It noted that, “respondents, and not the OPC, most frequently initiate discussion about discipline by consent...” And, according to people interviewed by the consultation team, “there appears to them to be some reticence by the OPC to consensual discipline.”

As part of its recommendation regarding discipline by consent, the ABA stated:

The Discipline Committee believes that discipline by consent should be encouraged, and recommends that the OPC takes steps to evaluate how this process can be used more frequently when appropriate. Conversations regarding consensual resolution of matters in appropriate cases should be initiated promptly, and that the OPC should not wait for the respondent to take the initiative to start those discussions. **Delaying the commencement of that process does not benefit the public or the system.**

ABA Report p. 103.

After receiving the ABA’s report, the Utah Supreme Court appointed a committee to evaluate the ABA’s recommendations. Recommendation 4.6 of the ABA/OCP Committee was that “Discipline by consent should be encouraged at all stages of the proceeding.”

With that backdrop in mind, I will now set forth the issue that I am requesting this Committee address with a rule change.



Under the current version of Rule 11-565, if a Respondent wishes to propose discipline by consent, they must first submit the proposal to the OPC. If the matter has not yet be submitted to a screening panel, then the OPC forwards the proposed discipline to the Committee Chair, along with the OPC's support or opposition to the recommendation. If an Action has been filed in district court, the respondent sends the proposed discipline to the OPC, who then forwards it to the district court, along with the OPC's opposition or support.

I would submit there are two problems with this current procedure. First, there is no need for the proposal to go through the OPC, rather than directly to the Committee Chair or the district court. I suspect this is something that first came about when there was no direct access to the Ethics and Discipline Committee. I believe it was sometime around 2016 when a full-time Committee Clerk was hired to handle scheduling of screening panels and communications with the Committee Chair. Prior to that time, the only way to reach the Committee was through the OPC.

However, that is no longer the case. Under the new system, I routinely communicate with the Committee Clerk regarding scheduling, briefing, appeals, etc. The Committee Clerk serves much the same role as a district court clerk in that regard.

So, from a logistical standpoint, there is no reason a respondent should have to submit their proposed discipline through the OPC.

Frankly, I cannot think of any reason why this procedure would be in place. The OPC does not have authority to summarily reject a proposed discipline by consent. It can only make a recommendation in favor of or against the proposal. As such, there does not seem to be any justification for a procedure that does not follow the typical format followed by attorneys in disputes. Namely, a filing by one party, an opposition/agreement by the other party, and then a ruling by the adjudicator. In litigation one side is not required to send a proposed motion to the opposing party so they can draft their opposition before eventually filing both with the court. I am not sure why we would have such a procedure in disciplinary cases.

This brings me to the second problem with the rule, which is exacerbated by the first. Under the current version of the rule there is no deadline for when the OPC must forward the respondent's proposal to either the Committee Chair or the district court.



Quite literally, a respondent is at the mercy of the OPC for when the matter can be addressed.

It is ironic, to say the least, that an attorney is standing up and saying, “please discipline me,” but then has to wait on the OPC to make it happen.

As is nearly always the case, requests for change are prompted by recent events. Allow me to set forth the facts that led me to write this letter.

I represent a client in a disciplinary case that was opened on September 19, 2020. Over a year later, a Screening Panel hearing was held on December 2, 2021. The Ethics and Discipline Committee issued its findings on January 3, 2022, and recommended a Public Reprimand. Pursuant to Rule 11-534, my client elected a trial de novo on January 7, 2022. By rule, the ball was in the OPC’s court and nothing could happen until the OPC filed a complaint in district court. It was not until four months later, on May 5, 2022, that the complaint was finally filed.

After filing the Answer and exchanging initial disclosures, my client sent the OPC his rule 11-565 Proposed Discipline by Consent. This happened on August 12, 2022. After two months of not hearing anything from the OPC, I sent an email on October 11, 2022, inquiring about the status. Here is the response I received that same day from the OPC:

“As you know the Rules do not set a required time for when a Discipline Consent proposal is to be submitted to the Court. We also cannot give you a definitive date. We will make every effort to submit it to the Court along with our response within the next 30-40 days. We appreciate your patience.”

Clearly, the lack of a rule-defined deadline is an issue.

Keep in mind, this is a case that the OPC investigated for over a year before sending it to a screening panel. Prior to the screening panel hearing the OPC submitted a summary of its investigation and its recommendations. After the hearing the OPC took four months to draft a complaint. There is quite literally nothing about this case the OPC does not already know.

While I understand the OPC must balance its case load, just like any other law office, it would seem appropriate to prioritize those cases where a respondent is expressing a willingness to be sanctioned. This would serve the purposes of attorney discipline and conserve the resources of the OPC. It is also the fair thing to do for respondents and it is consistent with general litigation practices. Deadlines are part of the world we live in.

According to an order issued by the district court in my client's trial de novo case, fact discovery will end on January 14, 2023. If the OPC takes an additional 40 days to forward the proposal, the district court would not receive it until around November 20, 2022. Given the state of court calendars and the delays inherent in the holiday season, it is extremely unlikely anything would be done prior to fact discovery ending on January 14, 2023. The practical effect of that delay is that my client must conduct fact discovery in order to protect himself from the possibility that the district court rejects his proposal. And if the court accepts his proposal, he will have gone through the time and expense of fact discovery for nothing.

Obviously, there is nothing this Committee can do to address the immediate dilemma faced by my client. However, the Committee can make changes to the rule that would prevent it from happening in the future.

Given the ABA's emphasis on eliminating delay, and the benefits of discipline by consent, I would respectfully ask that this Committee consider amending Rule 11-565(a) and (b) as follows:

(a) Discipline by consent before the matter is submitted to a screening panel. A Respondent against whom a Complaint has been filed may, before the matter is submitted to a screening panel, tender a proposal for discipline by consent, including a conditional admission to the Complaint or portions thereof in exchange for a disciplinary sanction and final disposition of the Complaint. The proposal must include a waiver of right to a screening panel hearing. The Respondent must submit the proposal to the **Clerk of the Ethics and Discipline Committee OPC**, who will forward the proposal to the Committee chair **and the OPC**. **Within 21 days of receiving the proposal, the OPC may submit with a**



recommendation in favor of or opposed to the proposal and a statement of the basis for such recommendation. **The OPC's recommendation will be submitted to the Clerk, who will forward a copy to the Respondent. The Respondent may submit a reply to the OPC's recommendation within 7 days.** If the Committee chair approves the proposal, the sanction will be imposed as provided in this rule. If the proposal is rejected by the Committee chair, the proposal and admission will be withdrawn and cannot be used against the Respondent in subsequent proceedings.

(b) Discipline by consent after filing an Action. A Respondent against whom an Action has been filed may tender a conditional admission to the allegations in the OPC's complaint or to a particular count thereof in exchange for a stated form of discipline and final disposition of the Action. The proposal must be **filed with the district court and served on the OPC as required by the Rules of Civil Procedure.** ~~submitted to the OPC, who will then forward the proposal to~~ **Within 21 days of being served with the proposal, the OPC may file with** the district court with a recommendation favoring or opposing the proposal and a statement of the basis for such recommendation. **The Respondent may submit a reply to the OPC's recommendation within 7 days.** The district court will either approve or reject the proposal. If the district court approves the proposal and the stated form of discipline includes public discipline, it will enter the appropriate disciplinary order as provided in paragraph (d). If the district court rejects the proposal, the proposal and conditional admission will be withdrawn and cannot be used against the Respondent in subsequent proceedings.

I very much appreciate the Committee's work and willingness to consider my proposal. Should the Committee think it would be beneficial, I would be happy to appear before the Committee to discuss these issues.

Sincerely,  
/s/Todd Wahlquist  
Todd Wahlquist

# Tab 3

1 **Rule 11-581. Sanctions.**

2 (a) **Scope.** A disciplinary sanction is imposed on a Lawyer upon the Committee's or the  
3 court's finding that the Lawyer has engaged in professional misconduct.

4 (b) **Delicensure.** Delicensure terminates the individual's status as a Lawyer. A Lawyer  
5 who has been delicensed may be relicensed.

6 (c) **Suspension.** Suspension removes a Lawyer from the practice of law for a specified  
7 minimum time, generally six months or more. In no event should the time before  
8 application for reinstatement be more than three years.

9 (d) **Interim suspension or interim discipline.** Interim suspension temporarily suspends  
10 a Lawyer from the practice of law. Interim suspension or interim discipline may be  
11 imposed as set forth in Rules 11-563 and 11-564.

12 (e) **Reprimand.** Reprimand is public discipline that declares the Lawyer's conduct  
13 improper, but does not limit the Lawyer's right to practice law.

14 (f) **Admonition.** Admonition is nonpublic discipline that declares the conduct of the  
15 Lawyer improper, but does not limit the Lawyer's right to practice law.

16 (g) **Probation.** Probation allows a Lawyer to practice law under specified conditions.  
17 ~~Probation~~The Lawyer's probationary status is public, but the terms of probation may be  
18 public or nonpublic.7 Probation may be imposed alone or in conjunction with other  
19 sanctions, and imposed as a condition of reinstatement or relicensure.

20 (1) **Requirements.** To be eligible for probation, a Respondent must demonstrate  
21 that:

22 (A) the Respondent can perform legal services and the continued practice  
23 of law will not cause the courts or the profession to fall into disrepute;

24 (B) the Respondent is unlikely to harm the public during probation;

25 (C) the necessary conditions of probation can be adequately supervised;  
26 and

27 (D) the Respondent has not committed acts warranting delicensure.

28 (2) **Conditions.** Probation may include the following conditions:

29 (A) no further violations of the Rules of Professional Conduct or Licensed  
30 Paralegal Practitioner Rules of Professional Conduct;

31 (B) restitution;

32 (C) assessment of costs;

33 (D) limitation on practice;

34 (E) requirement that the Lawyer pass the Multistate Professional  
35 Responsibility Exam;

36 (F) requirement that the Lawyer take continuing legal education courses;

37 (G) mental health counseling and treatment;

38 (H) abstinence from drugs and alcohol;

39 (I) medical evaluation and treatment;

40 (J) periodic reports to the court and the OPC; and

41 (K) monitoring of all or part of Respondent's work by a supervising  
42 attorney.

43 (3) **Costs.** The Respondent is responsible for all costs of evaluation, treatment,  
44 and supervision. Failing to pay these costs before probation terminates is a  
45 violation of probation.

46 (4) **Terminating probation.** A Respondent may terminate probation by filing  
47 with the district court and serving on the OPC an unsworn declaration stating  
48 that the Respondent has fully complied with the requirements of the probation  
49 order. The OPC may file an objection and thereafter the court will conduct a  
50 hearing.

51 (5) **Violations.** If during the period of probation, the OPC receives information  
52 that any probation term has been violated, the OPC may file a motion specifying  
53 the alleged violation and seeking to have the probation terminated. Upon filing  
54 such motion, the Respondent must have the opportunity to respond and a  
55 hearing will be held, at which time the court will determine whether to revoke  
56 probation.

57 (h) **Diversion.** Diversion is an alternative to a sanction if completed. Diversion allows a  
58 Lawyer to practice law under specified conditions. Diversion may be public or non-  
59 public.

60 (1) Rule 11-550 governs diversion matters before the matter is submitted to a  
61 screening panel.

62 (2) For an Action, the following criteria will determine the appropriateness of a  
63 diversion:

64 (A) The misconduct does not involve the misappropriation of funds or  
65 property; fraud, dishonesty, deceit or misrepresentation; or the  
66 commission of a misdemeanor adversely reflecting on the Lawyer's fitness  
67 to practice law or any felony;

68 (B) The misconduct appears to be the result of inadequate law office  
69 management, chemical dependency, a physical or mental health  
70 condition, negligence or lack of training, education or other similar  
71 circumstance; and

72 (C) There appears to be a reasonable likelihood that the successful  
73 completion of a remedial program will prevent the recurrence of conduct  
74 by the attorney similar to that under consideration for diversion.

75 (3) In addition to the above-required criteria of (A), (B) and (C), other  
76 considerations may include whether the misconduct is a one-time act or based on

77 a physical or mental condition beyond the Respondent's control and whether  
78 there is sufficient evidence connecting the condition to the misconduct.

79 (4) Diversion determinations must include compliance conditions to address the  
80 misconduct and the time for completion.

81 (5) If the Lawyer completes the diversion conditions, the Action will be  
82 dismissed with prejudice.

83 (6) If the Lawyer does not complete the diversion conditions within the required  
84 time, the Lawyer will be subject to a suspension of six months and a day.

85 (i) **Resignation with discipline pending.** Resignation with discipline pending is a form  
86 of public discipline that allows a Respondent to resign from the practice of law while  
87 either a Complaint or Action is pending against the Respondent. Resignation with  
88 discipline pending may be imposed as set forth in Rule 11-566.

89 (j) **Other sanctions and remedies.** Other sanctions and remedies that a court may  
90 impose include:

91 (1) restitution;

92 (2) assessment of costs;

93 (3) limitation upon practice;

94 (4) appointment of a receiver;

95 (5) a requirement that the Lawyer take the Bar Examination or professional  
96 responsibility examination; and

97 (6) a requirement that the Lawyer attend continuing education courses.

98 (k) **Reciprocal discipline.** Reciprocal discipline is imposing a disciplinary sanction on a  
99 Lawyer who has been disciplined in another court, another jurisdiction, or a regulatory  
100 body having disciplinary jurisdiction.

1 **Rule 11-582. Factors to be considered in imposing sanctions.**

2 (a) The Committee and the court must consider the following factors ~~should be~~  
3 ~~considered~~ in imposing ~~a~~ sanctions after a finding of Lawyer misconduct:

4 (1) the presumptive sanction as contained in these rules or, if there is no  
5 presumptive sanction, the appropriate sanction based on:

6 (A~~a~~) the duty violated;

7 (B~~b~~) the Lawyer’s mental state;

8 (C~~e~~) the potential or actual injury caused by the Lawyer’s misconduct; and

9 (2~~d~~) the existence of aggravating or mitigating factors.

10 **(b) Multiple charges of misconduct.**

11 (1) Where a Respondent is found to have committed multiple charges of  
12 misconduct, the ultimate sanction imposed must at least be consistent with the  
13 sanction for the most serious instance of misconduct among the violations, and  
14 may be greater than the sanction for the most serious misconduct.

15 (2) Either a pattern of misconduct or multiple instances of misconduct should be  
16 considered as aggravating factors.

17

1 ~~**Rule 11-583. Imposition of sanctions.**~~

2 ~~Absent aggravating or mitigating circumstances, upon application of the factors set out~~  
3 ~~in Rule 11-582, the following sanctions are generally appropriate.~~

4 ~~(a) **Disbarment.** Disbarment is generally appropriate when a Lawyer:~~

5 ~~(1) knowingly engages in professional misconduct as defined in Rule~~  
6 ~~8.4(a), (d), (e), or (f) of the Rules of Professional Conduct with the intent to~~  
7 ~~benefit the Lawyer or another or to deceive the court, and causes serious~~  
8 ~~or potentially serious injury to a party, the public, or the legal system, or~~  
9 ~~causes serious or potentially serious interference with a legal proceeding;~~  
10 ~~or~~

11 ~~(2) engages in serious criminal conduct, a necessary element of which~~  
12 ~~includes intentional interference with the administration of justice, false~~  
13 ~~swearing, misrepresentation, fraud, extortion, misappropriation, or theft;~~  
14 ~~or the sale, distribution, or importation of controlled substances; or the~~  
15 ~~intentional killing of another; or an attempt or conspiracy or solicitation of~~  
16 ~~another to commit any of these offenses; or~~

17 ~~(3) engages in any other intentional misconduct involving dishonesty,~~  
18 ~~fraud, deceit, or misrepresentation that seriously adversely reflects on the~~  
19 ~~Lawyer's fitness to practice law.~~

20 ~~(b) **Suspension.** Suspension is generally appropriate when a Lawyer:~~

21 ~~(1) knowingly engages in professional misconduct as defined in Rule~~  
22 ~~8.4(a), (d), (e), or (f) of the Rules of Professional Conduct and causes injury~~  
23 ~~or potential injury to a party, the public, or the legal system, or causes~~  
24 ~~interference or potential interference with a legal proceeding; or~~

~~(2) engages in criminal conduct that does not contain the elements listed in Rule 14-605(a)(2) but nevertheless seriously adversely reflects on the Lawyer's fitness to practice law.~~

~~(c) **Reprimand.** Reprimand is generally appropriate when a Lawyer:~~

~~(1) negligently engages in professional misconduct as defined in Rule 8.4(a), (d), (e), or (f) of the Rules of Professional Conduct and causes injury to a party, the public, or the legal system, or causes interference with a legal proceeding; or~~

~~(2) engages in any other misconduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the Lawyer's fitness to practice law.~~

~~(d) **Admonition.** Admonition is generally appropriate when a Lawyer:~~

~~(1) negligently engages in professional misconduct as defined in Rule 8.4(a), (d), (e), or (f) of the Rules of Professional Conduct and causes little or no injury to a party, the public, or the legal system or interference with a legal proceeding, but exposes a party, the public, or the legal system to potential injury or causes potential interference with a legal proceeding; or~~

~~(2) engages in any professional misconduct not otherwise identified in this rule that adversely reflects on the Lawyer's fitness to practice law.~~

Rule 11-583. Presumptive sanctions for violating duties owed to clients.

(a) **Failing to preserve the client's property.** The following sanctions are generally appropriate when a Lawyer fails to preserve client property in violation of Rule 1.15:

(1) Delicensure is generally appropriate when a Lawyer knowingly converts client property, with the intent to benefit the Lawyer or another, and causes serious injury or potentially serious injury to a client.

50 (2) Suspension is generally appropriate when a Lawyer knows or should know  
51 that the Lawyer is dealing improperly with client property and causes injury or  
52 potential injury to a client.

53 (3) Reprimand is generally appropriate when a Lawyer is negligent in dealing  
54 with client property and causes injury or potential injury to a client.

55 (4) Admonition is generally appropriate when a Lawyer is negligent in dealing  
56 with client property and causes little or no actual or potential injury to a client.

57 **(b) Failing to preserve the client's confidences.** The following sanctions are generally  
58 appropriate when a Lawyer improperly reveals information related to representing a  
59 client in violation of Rule 1.6:

60 (1) Delicensure is generally appropriate when a Lawyer, with the intent to  
61 benefit the Lawyer or another, knowingly reveals information relating to  
62 representation of a client not otherwise lawfully permitted to be disclosed, and  
63 the disclosure causes serious injury or potentially serious injury to a client.

64 (2) Suspension is generally appropriate when a Lawyer knowingly reveals  
65 information relating to the representation of a client not otherwise lawfully  
66 permitted to be disclosed, and the disclosure causes injury or potential injury to a  
67 client.

68 (3) Reprimand is generally appropriate when a Lawyer negligently reveals  
69 information relating to representation of a client not otherwise lawfully  
70 permitted to be disclosed and the disclosure causes injury or potential injury to a  
71 client.

72 (4) Admonition is generally appropriate when a Lawyer negligently reveals  
73 information relating to representation of a client not otherwise lawfully  
74 permitted to be disclosed and the disclosure causes little or no actual or potential  
75 injury to a client.

76 (c) Failing to avoid conflicts of interest. The following sanctions are generally  
77 appropriate in cases involving conflicts of interest in violation of Rules 1,7, 1.8, 1.9, 1.10,  
78 1.11, 1.12, 1.13, 3.7, 5.4(c), or 6.3:

79 (1) Delicensure is generally appropriate when a Lawyer, without the informed  
80 consent of client(s):

81 (A) engages in representation of a client knowing that the Lawyer's  
82 interests are adverse to the client's with the intent to benefit the Lawyer or  
83 another, and causes serious or potentially serious injury to the client;

84 (B) simultaneously represents clients that the Lawyer knows have adverse  
85 interests with the intent to benefit the Lawyer or another, and causes  
86 serious or potentially serious injury to a client;

87 (C) represents a client in a matter substantially related to a matter in  
88 which the interests of a present or former client are materially adverse,  
89 and knowingly uses information relating to the representation of a client  
90 with the intent to benefit the Lawyer or another, and causes serious or  
91 potentially serious injury to a client.

92 (2) Suspension is generally appropriate when a Lawyer knows of a conflict of  
93 interest and does not fully disclose to a client the possible effect of that conflict,  
94 and causes injury or potential injury to a client.

95 (3) Reprimand is generally appropriate when a Lawyer is negligent in  
96 determining whether the representation of a client may be materially affected by  
97 the Lawyer's own interests, or whether the representation will adversely affect  
98 another client, and causes injury or potential injury to a client.

99 (4) Admonition is generally appropriate when a Lawyer engages in an isolated  
100 instance of negligence in determining whether the representation of a client may  
101 be materially affected by the Lawyer's own interests, or whether the

102 representation will adversely affect another client, and causes little or no actual  
103 or potential injury to a client.

104 (d) **Lack of diligence.** The following sanctions are generally appropriate when a  
105 Lawyer fails to act with reasonable diligence and promptness in representing a client in  
106 violation of Rules 1.2(a), 1.2(b), 1.2(c), 1.2(e), 1.3, or 1.4:

107 (1) Delicensure is generally appropriate when a Lawyer abandons the practice of  
108 law and thereby causes serious or potentially serious injury to a client;

109 (2) Delicensure or suspension is generally appropriate when a Lawyer engages in  
110 a substantial pattern of neglect or knowingly fails to perform significant services  
111 for a client and thereby causes injury to a client. The appropriate sanction will  
112 depend on the nature and significance of the services and the seriousness of the  
113 injury to the client.

114 (3) Reprimand is generally appropriate when a Lawyer is negligent and does not  
115 act with reasonable diligence in representing a client, and thereby causes injury  
116 or potential injury to a client.

117 (4) Admonition is generally appropriate when a Lawyer is negligent and does  
118 not act with reasonable diligence in representing a client, and causes little or no  
119 actual or potential injury to a client.

120 (e) **Lack of competence.** The following sanctions are generally appropriate when a  
121 Lawyer fails to provide competent representation to a client in violation of Rule 1.1:

122 (1) Delicensure or suspension is generally appropriate when a Lawyer's course of  
123 conduct demonstrates that the Lawyer:

124 (A) does not understand fundamental legal doctrines or procedures, and  
125 the Lawyer's conduct causes injury or potential injury to a client; or

126 (B) substantially engages in areas of practice central to the representation  
127 of a client in which the Lawyer knows the Lawyer is not competent and

128 thereby causes injury or potential injury to a client. The appropriate  
129 sanction will depend on the scope and significance of the incompetent  
130 representation and the seriousness of the injury to the client.

131 (3) Reprimand is generally appropriate when a Lawyer:

132 (A) demonstrates failure to understand relevant legal doctrines or  
133 procedures and causes injury or potential injury to a client; or

134 (B) is negligent in determining whether the Lawyer is competent to handle  
135 a legal matter and causes injury or potential injury to a client.

136 (4) Admonition is generally appropriate when a Lawyer engages in an isolated  
137 instance of negligence in determining whether the Lawyer is competent to  
138 handle a legal matter, and causes little or no actual or potential injury to a client.

139 (f) Lack of candor. The following sanctions are generally appropriate in cases where a  
140 Lawyer engages in fraud, deceit, or misrepresentation directed toward a client in  
141 violation of Rules 1.5 or 8.4(c):

142 (1) Delicensure is generally appropriate when a Lawyer knowingly deceives a  
143 client with the intent to benefit the Lawyer or another, and causes serious or  
144 potentially serious injury to a client.

145 (2) Suspension is generally appropriate when a Lawyer knowingly deceives a  
146 client, and causes injury or potential injury to the client.

147 (3) Reprimand is generally appropriate when a Lawyer negligently fails to  
148 provide a client with accurate or complete information, and causes injury or  
149 potential injury to the client.

150 (4) Admonition is generally appropriate when a Lawyer engages in an isolated  
151 instance of negligence in failing to provide a client with accurate or complete  
152 information, and causes little or no actual or potential injury to the client.

1 **Rule 11-584. Presumptive sanctions for violating duties owed to the public.**

2 (a) **Failing to maintain personal integrity.** The following sanctions are generally  
3 appropriate when a Lawyer commits a criminal act that reflects adversely on the  
4 Lawyer’s honesty, trustworthiness, or fitness as a Lawyer in other respects in violation  
5 of Rules 8.1, 8.4(b), or 8.4(c):

6 (1) Delicensure is generally appropriate when a Lawyer intentionally or  
7 knowingly engages in criminal conduct that would be a felony under applicable  
8 law and the conduct:

9 (A) involves dishonesty, fraud, deceit, or misrepresentation, including but  
10 not limited to theft, fraud, extortion, bribery, obstruction of justice, and  
11 false statements; or

12 (B) poses a serious danger to the safety of others, including but not limited  
13 to assault, homicide, kidnapping, sexual offenses, and distribution of  
14 controlled substances.

15 (2) Suspension is generally appropriate when a Lawyer intentionally or  
16 knowingly engages in non-felony criminal conduct that seriously adversely  
17 reflects on the Lawyer’s honesty, trustworthiness, or fitness as a Lawyer in other  
18 respects.

19 (3) Either reprimand or admonition is appropriate when a Lawyer engages in  
20 any other non-felony criminal conduct that adversely reflects on the Lawyer’s  
21 fitness to practice law, depending on the potential or actual injury to the public  
22 trust.

23 (b) **Failing to adhere to the special duties of a prosecutor.** The following sanctions are  
24 generally appropriate in cases involving Lawyers who violate Rule 3.8:

25 (1) Delicensure is generally appropriate when a Lawyer violates the special  
26 duties of a prosecutor with the intent to obtain a significant benefit or advantage

27 for the Lawyer or another, or with the intent to cause serious or potentially  
28 serious injury to a party or to the integrity of the legal process.

29 (2) Suspension or reprimand is generally appropriate when a Lawyer knowingly  
30 or negligently violates the special duties of a prosecutor. The appropriate  
31 sanction will depend on the Lawyer's mental state and the seriousness of the  
32 injury or potential injury to a party or to the integrity of the legal process.

33 (3) Admonition is generally appropriate when a Lawyer violates the special  
34 duties of a prosecutor in an isolated instance of negligence, and causes little or no  
35 actual or potential injury to a party or to the integrity of the legal process.

1 **Rule 11-585. Presumptive sanctions for violating duties owed to the legal system.**

2 (a) **False statements, fraud, and misrepresentation.** The following sanctions are  
3 generally appropriate when a Lawyer's conduct is prejudicial to the administration of  
4 justice or involves dishonesty, fraud, deceit, or misrepresentation to a court in violation  
5 of Rules 1.2(d), 3.3, or 4.1:

6 (1) Delicensure is generally appropriate when a Lawyer, with the intent to  
7 deceive the court, makes a false statement, submits a false document, or  
8 improperly withholds material information, and causes serious or potentially  
9 serious injury to a party, or causes a significant or potentially significant adverse  
10 effect on the legal proceeding.

11 (2) Suspension is generally appropriate when a Lawyer learns that false  
12 statements or documents have been submitted or material information  
13 improperly withheld, and takes no remedial action, and thereby causes injury or  
14 potential injury to a party to the legal proceeding, or causes an adverse or  
15 potentially adverse effect on the legal proceeding.

16 (3) Reprimand is generally appropriate when a Lawyer is negligent either in  
17 determining whether statements or documents are false or in taking remedial  
18 action when material information is being withheld and causes injury or  
19 potential injury to a party to the legal proceeding, or causes an adverse or  
20 potentially adverse effect on the legal proceeding.

21 (4) Admonition is generally appropriate when a Lawyer engages in an isolated  
22 instance of neglect in determining whether submitted statements or documents  
23 are false or in failing to disclose material information upon learning of its falsity,  
24 and causes little or no actual or potential injury to a party, or causes little or no  
25 adverse or potentially adverse effect on the legal proceeding.

26 (b) **Abuse of the legal process.** The following sanctions are generally appropriate when  
27 a Lawyer violates Rules 3.1, 3.2, 3.4, 3.6, 3.9, 4.4, 8.4(e), or 8.4(f):

28 (1) Delicensure is generally appropriate when a Lawyer engages in a pattern or  
29 practice of knowingly abusing the legal process with the intent to obtain a benefit  
30 for the Lawyer or another and causes serious or potentially serious injury to a  
31 party, or causes serious or potentially serious interference with a legal  
32 proceeding.

33 (2) Suspension or reprimand is generally appropriate when a Lawyer knowingly  
34 or negligently abuses the legal process and causes injury or potential injury to a  
35 client or a party, or causes interference or potential interference with a legal  
36 proceeding. The appropriate sanction will depend on the Lawyer's mental state  
37 and the seriousness of the injury or potential injury to a client or a party, or the  
38 degree of interference or potential interference with a legal proceeding.

39 (3) Admonition is generally appropriate when a Lawyer negligently abuses the  
40 legal process in an isolated instance and causes little or no actual or potential  
41 injury to a party, or causes little or no actual or potential interference with a legal  
42 proceeding.

43 (c) **Improper communications with individuals in the legal system.** The following  
44 sanctions are generally appropriate when a Lawyer attempts to influence a judge, juror,  
45 prospective juror, or other official by means prohibited by law in violation of Rule 3.5,  
46 4.2, or 4.3:

47 (1) Delicensure is generally appropriate when a Lawyer:

48 (A) intentionally tampers with a witness and causes serious or potentially  
49 serious injury to a party, or causes significant or potentially significant  
50 interference with the outcome of the legal proceeding;

51 (B) makes an ex parte communication with a judge or juror with intent to  
52 affect the outcome of the proceeding, and causes serious or potentially  
53 serious injury to a party, or causes significant or potentially significant  
54 interference with the outcome of the legal proceeding; or

55 (C) improperly communicates with someone in the legal system other  
56 than a witness, judge, or juror with the intent to influence or affect the  
57 outcome of the proceeding, and causes significant or potentially  
58 significant interference with the outcome of the legal proceeding.

59 (2) Suspension is generally appropriate when a Lawyer engages in  
60 communication with an individual in the legal system when the Lawyer knows  
61 that such communication is improper, and causes injury or potential injury to a  
62 party or causes interference or potential interference with the outcome of the  
63 legal proceeding.

64 (3) Reprimand is generally appropriate when a Lawyer is negligent in  
65 determining whether it is proper to engage in communication with an individual  
66 in the legal system, and causes injury or potential injury to a party or interference  
67 or potential interference with the outcome of the legal proceeding.

68 (4) Admonition is generally appropriate when a Lawyer engages in an isolated  
69 instance of negligence in improperly communicating with an individual in the  
70 legal system, and causes little or no: (A) actual or potential injury to a party, or  
71 (B) actual or potential interference with the outcome of the legal proceeding.

1 **Rule 11-586. Sanctions for violating duties owed as a member of the legal profession.**  
2 In cases including but not limited to false or misleading communication about the  
3 Lawyer or the Lawyer’s services, improper solicitation of professional employment  
4 from a prospective client, unreasonable or improper fees, unauthorized practice of law,  
5 improper withdrawal from representation, failure to respond to a lawful request for  
6 information from a disciplinary authority, or failure to report professional misconduct  
7 in violation of Rules 1.5, 1.14, 1.16, 2.1, 2.3, 5.1, 5.2, 5.3, 5.4(a), 5.4(b), 5.4(d), 5.5, 5.6, 6.2,  
8 7.1, 8.1, and 8.3, the appropriate sanction will vary based on the Lawyer’s mental state  
9 and the potential or actual injury to a client, the public, or the legal system.

# Tab 4

1 **Rule 11-503. Oversight Committee for the Office of Professional Conduct.**

2 (a) **Establishment.** The Oversight Committee for the Office of Professional Conduct  
3 (“Oversight Committee”) is established as a Supreme Court committee.

4 (1) **Composition.**

5 (A) The Oversight Committee consists of five voting members. Among the  
6 members, at least one must be a judge; one a member of the public; and  
7 one a past chair or past vice-chair of the Ethics and Discipline Committee.  
8 At least one of the members must have an accounting or finance  
9 background.

10 (B) The executive director of the Utah Bar will be an ex-officio, non-voting  
11 member of the Oversight Committee.

12 (2) **Appointment and member roles.** The Utah Supreme Court appoints  
13 Oversight Committee members who may serve up to two consecutive staggered  
14 four-year terms. The Supreme Court will select a chair from among the Oversight  
15 Committee’s members. Oversight Committee members serve as officers of the  
16 court and not as representatives of any client, employer, or other organization or  
17 interest group. At the first meeting of the Oversight Committee in any calendar  
18 year, and at every meeting at which a new Committee member first attends, each  
19 Committee member must briefly disclose the general nature of the member’s  
20 legal or other practice.

21 (3) **Meeting schedule.** The Oversight Committee will meet as often as necessary  
22 to accomplish its purposes but at least annually.

23 (4) **Vacancies.** If there is an Oversight Committee vacancy, the Supreme Court  
24 will appoint a new Committee member to serve for the remainder of the  
25 unexpired term.

26 (5) **Absences.** If an Oversight Committee member fails to attend two consecutive  
27 Committee meetings, the chair may notify the Supreme Court of those absences  
28 and may request that the Supreme Court replace that Committee member.

29 (6) **Administrative support.** The Administrative Office of the Courts shall  
30 coordinate administrative support to the Committee.

31 (b) **Oversight Committee purpose, responsibilities, and authority.**

32 (1) **Oversight Committee purpose.** The Oversight Committee’s purpose is to  
33 assist the OPC in implementing reforms to the attorney discipline process  
34 adopted by the Utah Supreme Court and to provide oversight for the OPC.

35 (2) **Oversight Committee responsibilities.** The following comprise the Oversight  
36 Committee’s responsibilities:

37 (A) Develop and implement realistic performance metrics and conduct  
38 annual evaluations of OPC and its Chief Disciplinary Counsel;

39 (B) Approve the budget for the OPC and annually submit the budget to  
40 the Supreme Court and the Bar;

41 (C) Conduct a needs assessment for the OPC, setting forth a three- to five-  
42 year funding plan for the disciplinary process, including technology and  
43 staffing needs;

44 (D) Annually, in conjunction with Chief Disciplinary Counsel and the  
45 Ethics and Discipline Committee chair, report to the Court regarding the  
46 operations of the OPC and the general standing of disciplinary matters  
47 and procedures;

48 (E) Develop and monitor formal policies for the OPC, including records  
49 retention policies;

50 (F) Recommend rules of administration and procedure to the Supreme  
51 Court;

52 (G) Recommend a Chief Disciplinary Counsel to be appointed by the  
53 Supreme Court;

54 (H) Monitor the OPC's workload and recommend to the Supreme Court  
55 adequate OPC staffing; and

56 (I) Review and consider any public input.

57 (3) **Authority.** The Oversight Committee does not have authority to interfere  
58 with the prosecutorial independence of the OPC, but is granted access to  
59 confidential information as necessary to carry out its duties.

60 (c) **Complaints and appeals.**

61 (1) Any person may file with the Oversight Committee chair a complaint alleging  
62 malfeasance regarding the Chief Disciplinary Counsel. If necessary, the  
63 Oversight Committee may enter a recommendation to the Supreme Court, which  
64 may take appropriate action.

65 (2) If a complaint regarding the Chief Disciplinary Counsel is received in the  
66 OPC's office, the Chief Disciplinary Counsel must forward the complaint to the  
67 Oversight Committee chair within a reasonable time, but not more than 14 days  
68 after receipt.

69 (3) Any person may file with the Chief Disciplinary Counsel a complaint alleging  
70 malfeasance regarding OPC Counsel or staff. The Chief Disciplinary Counsel's  
71 decision regarding the complaint is final and not subject to appeal. The Chief  
72 Disciplinary Counsel's decision may include an appropriate action taken against  
73 the person who is the subject of the complaint.

74 (4) A complaint must be in writing, stating the name and contact information of  
75 the complainant, the nature of the complaint, and the facts on which the  
76 complaint is based.

Utah Code of Judicial Administration section 11-503

77 (5) Unless the appropriate action taken on a complaint is part of a formal  
78 proceeding, any action taken is confidential.

79 *Effective: 12/15/2020*

80