



Agenda

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

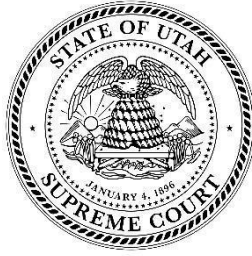
Arthur B. Berger, Chair

Location:	Meeting held through Webex and in person at: Matheson Courthouse, Judicial Council Room – Room N. 301 450 S. State St. Salt Lake City, Utah 84111 https://utcourts.webex.com/utcourts/j.php?MTID=mb774e6746105c3eaf2f6e91c1938ef1
Date:	December 9, 2025
Time:	4:30 to 6:00 p.m.

Action: Welcome and approval of April 9, 2025 Minutes	Tab 1	Art Berger, Chair
Discussion: Rule 11-530	Tab 2	Christine Greenwood, Beth Kennedy
Discussion: Old/new business		Art Berger

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

Tab 1



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

Draft Meeting Minutes

April 9, 2025

Meeting held through Webex and in person

Matheson Courthouse

Judicial Council Room

450 S. State St.

Salt Lake City, UT 84111

4:30–5:30 p.m.

Arthur B. Berger, presiding

Attendees:

Arthur Berger, Chair

Mark Hindley

Aeryn Murphy

Roger Smith

Lara Swensen

Elizabeth Wright, Ex-officio member

Guests:

Christine Greenwood, Office of Professional Conduct

Nathan Severin, Utah State Bar Finance Director

Staff:

Nick Stiles, Appellate Court Administrator

Amber Griffith, Recording Secretary

Excused:

Eric Jenkins

Judge Laura Scott

Margaret Plane

1. Welcome and Approval of March 25, 2025 minutes: (Arthur Berger)

Arthur Berger welcomed everyone to the meeting and asked for approval of the minutes from the March 25, 2025 meeting.

Mark Hindley moved to approve the minutes. Lara Swensen seconded that motion, and the minutes were unanimously approved.

2. Discussion – OPC Proposed Budget: (Christine Greenwood, Nathan Severin)

Christine Greenwood introduced Nathan Severin the Utah State Bar Finance Director. Mr. Severin then explained the budget as it appeared on the screen. Mr. Severin stated that the sheet listed the actual budget totals for fiscal years 2022, 2023, and 2024. It also listed the projected budget for the current fiscal year, 2025, and the projected final budget for fiscal year 2026.

Mr. Severin began by explaining the revenue that the OPC receives from the OPC Ethics School and Trust Accounting School. That revenue increased in 2025 due to an increase in the price for the schools and attendance rate.

- Roger Smith questioned whether the classes for 2025 have concluded or if the amount listed for 2025 was projected. Ms. Greenwood confirmed that all classes have concluded.

Mr. Severin then discussed the projected expense increases for 2026. There is an increase of just around \$8,000 in travel costs which is due to Ms. Greenwood prioritizing education for employees.

- Mr. Smith noted a new meeting listed named ABA Mid Year Meeting. Ms. Greenwood stated that the OPC would be sending one attorney to that conference. Additionally, the OPC will be allowing each attorney to attend one to two conferences a year.

Mr. Severin also noted that Salaries & Benefits have a projected increase as Ms. Greenwood continues to make market adjustments to employee salaries.

- Mr. Smith asked if the budget is anticipating a new hire. Mr. Severin replied that the budget does not include money for any new hires. Ms. Greenwood confirmed that unfortunately the OPC will have to wait to hire any additional attorneys. Ms. Wright added that the Bar is hoping for a licensing fee increase this next budget year which could help fund an additional attorney for the OPC.
- Lara Swensen questioned why retirement decreased. Mr. Severin explained that it was due to turnover and added that the Bar only adds funds to retirement after an employee has been with the Bar for one year.

Mr. Severin then informed the Committee that the new data system that the OPC needs will cost less than anticipated. They had reserved \$30,000 for the system but they believe it will only end up costing \$10,000.

- Mark Hindley noted an increase of \$325% in computer supplies and small equipment. Mr. Severin stated that it was for replacement computers for staff.

Lastly Mr. Severin noted an increase in building overhead which was seen across the entire Bar and asked if there were any questions from the Committee.

- Mr. Berger asked if there was anything that the Committee could do that would be helpful. Ms. Greenwood replied that following the Committee's previous meeting she has been thinking of ways that the OPC could possibly increase revenue. One possibility would be to seek costs if OPC is the prevailing party, but OPC doesn't incur too many expenses throughout their cases. Ms. Wright also noted that the OPC isn't intended to be a revenue-making department. Mr. Smith asked if charging for the discipline reports would help with the number of requests that they receive. Ms. Greenwood stated that it would stay steady as the requests are typically for people applying for pro hac vice or to apply for a judge position opening.
- Ms. Swensen asked if the Bar had any reserves that the OPC could use to help until the licensing fee increase happens. Ms. Greenwood replied that the OPC has already used a stop gap that went towards salary increases for current staff. Mr. Severin added that their current projections already show that they may be out of reserves soon.

Following this discussion Mr. Hindley moved to approve the proposed budget for OPC's fiscal year 2026. Mr. Smith seconded that motion, and it unanimously passed.

3. New/old business:

Arthur Berger informed the Committee that Christine Greenwood will be presenting proposed rule amendments at the next committee meeting which will be scheduled at a later date.

The meeting then adjourned.

Tab 2

MEMORANDUM

From: Christine Greenwood and Beth Kennedy

To: OPC Oversight Committee

Re: Proposed Amendments to Supreme Court Rule of Professional Practice 11-530

Date: December 2, 2025

Over the past several years, the Office of Professional Conduct (“OPC”) and the Ethics and Discipline Committee (“Committee”) have been considering possible reforms to the processes governing OPC dismissals of bar complaints and complainants’ appeals of those dismissals to the Committee chair. An excerpt from the Committee’s 2022 Report to the Utah Supreme Court (“2022 Report”), prepared when Christine Greenwood was chair of the Committee, is attached as **Exhibit A** and explains the reasons why reform is needed. Since Ms. Kennedy took over as chair and Ms. Greenwood moved to the OPC, they have continued to consider these issues, and now would like to continue to the discussion with the Oversight Committee. These issues include the problem that occurs when the Committee chair reverses an appeal but, on remand, the OPC disagrees with the chair’s position and so informs the Committee screening panel, leading ultimately to the dismissal of the case.

In addition to gathering input from the Oversight Committee, the OPC and Committee now propose to implement some of the reforms suggested in the 2022 Report through revisions to Rule 11-530. The current version of Rule 11-530 is attached as **Exhibit B**, a redline version of our proposed changes is attached as **Exhibit C**, and a clean version of the proposed changes to the rule is attached as **Exhibit D**.

In general, our suggested revisions aim clarify the process applicable to appeals, adjust the applicable standard of review, and address what happens following a reversal of a dismissal. Among other things, the proposed revisions also attempt to distinguish between a dismissal of a complaint on the merits versus a declination to prosecute a complaint and to address various other issues that have arisen with in connection with disciplinary proceedings, including in hearings before Committee screening panels.

The following bullet points address most of the proposed changes in order, referencing the line numbers in the redline version of the Rule (Exhibit B):

- Title – Our offices tend to use the nomenclature of “professional misconduct” more frequently than “unprofessional conduct,” although they are arguably

synonymous. We are mainly seeking to eliminate the use of “unprofessional misconduct.”

- Lines 10-12: We propose this addition due to arguments raised by Respondents who have challenged the OPC’s ability to move forward with an investigation when a complainant elects or seeks to withdraw a complaint. The OPC’s ability to proceed in the absence of a complainant has long been understood, but whether the OPC was required to prepare a separate complaint is unstated in the rules.
- Lines 19-20: I propose adding a reference to the unsworn declaration statute as many people do not know what language it requires. Another possibility would be to add in the language so it’s even clearer.
- Subsections (c), (d), and (e) lines 22-48: These revisions are intended to flesh out the OPC’s review process to a greater extent, primarily for purposes of transparency. At each stage in the process, the OPC assesses whether the complaint can be dismissed or whether we will decline to prosecute, assessing whether the evidence is sufficient to raise a genuine issue as to a potential rule violation.
 - Summary review is essentially a facial review of the complaint, although OPC may request additional information from the complainant if, for example, they have not included any attachments or if they state that they have evidence but have not provided it. We will also most often pull the case docket and relevant filings if there is a relevant underlying proceeding.
 - Initial investigation is a more in-depth look at the allegations, often including getting a response from the respondent, seeking documentation from both sides, talking to possible witnesses, etc.
 - Additional investigation involves obtaining more documentation, such as bank records, issuing subpoenas, contacting more witnesses, etc.
- Lines 34-40: We have moved what was subsection (d) to subsection (h), but the rule is otherwise unchanged (with one exception, addressed below).
- Lines 49-62: The revisions in this section, which addresses the Notice OPC prepares as a “charging document” directed to a respondent, are intended to clarify the OPC’s process. Among other things, rather than serving a just a copy of the complaint with the Notice, we typically send the whole file to the

respondent at that point. Not only will the respondent have already received a copy of the complaint by that point, but the complaint is included in the OPC file, and the respondent is entitled to see the documents we are relying on and citing in the Notice. Additionally, we propose that the OPC be permitted to mail *or* email the notice, rather than only being permitted to send the Notice by mail. In fact, this is a change that the Committee and OPC believe should be made throughout the rules.

- Lines 63-70: The proposed revisions in this section clarify that the answer filed by the respondent at this juncture of the proceedings is an answer to the Notice, not an answer to the complaint.
- Lines 72-77: This is the relocated subsection (d), regarding referral to the Professionalism and Civility Counseling Board. The only proposed revision is in the final line, where we propose substituting “material” for the term “facts.”
- Lines 79-97: These revisions attempt to address the distinction between dismissal of a complaint on the merits versus a declination to prosecute a complaint. The current version of the rule is unclear in that it categorizes a declination to prosecute as a dismissal. Although the end results are essentially the same, a declination to prosecute should be a reflection or exercise of the OPC’s discretion to elect not to pursue a case. To that end, we have provided a non-exclusive list of examples for when the OPC might exercise this discretion. By contrast, a dismissal reflects a determination that a complaint is insufficient to establish a violation of the Rules of Professional Conduct, whether due to a lack of evidence, conduct that doesn’t implicate the rules, or some other deficiency.
- Lines 98-99: This revision gives the OPC express authority to issue letters of caution. The OPC traditionally has done so previously, but this would grant the specific authority to the OPC.
- Lines 100-105: These provisions outline the OPC’s notification duties following a dismissal or declination to prosecute.
- Lines 106-108: In conjunction with additional revisions discussed below, this revision is intended to clarify what constitutes the “record” for purposes of an appeal from an OPC dismissal or declination. Complainants frequently send additional material to the OPC and/or the Committee even after a case has been dismissed. Historically, the OPC has sent these materials to the Committee chair to add to the appeal file. In an effort to reduce this practice, and to make clear that the chair need only review the materials that was before the OPC at the time of its dismissal, we propose informing the complainant that, if they have new or

different evidence regarding a potential violation, they should file a new complaint rather than continue to submit more materials regarding a complaint that has been dismissed.

- Lines 110-150: These revisions all address complainants' appeals of OPC's dismissals or declinations to prosecute and are intended to accomplish the following:
 - Lines 110-120: Add a page limitation to the appeal, impose the burden of proof on appeal on the complainant, require the complainant to explain the reasons why the OPC's dismissal was erroneous, and require the complainant to point to evidence that supports their complaint if the OPC dismissed due to a lack of evidence. In addition, the complainant is permitted to request additional time and additional pages for an appeal, to be granted on a showing of good cause.
 - Lines 121-122: In conjunction with the proposed addition at Lines 106-108, this revision limits the chair's review on appeal to the file compiled by the OPC at the time the complaint is dismissed.
 - Lines 123-131: These provisions state that, when the OPC declines to prosecute a complaint, the Committee chair will review that decision for abuse of discretion. On the other hand, when the OPC dismisses a complaint on the merits, the chair will reverse in certain enumerated circumstances, including where material facts show a potential rule violation, where the OPC has failed to address an issue, or where the OPC has committed some other error. At a prior Oversight Committee Meeting, we had considered applying an arbitrary and capricious/substantial evidence standard of review to OPC dismissals. However, the OPC and the Committee believe this is impractical with most appeals, given that many cases have no substantial record at the time of dismissal, making a substantial evidence review difficult or impractical.
 - Lines 132-150: These revisions allow the chair more flexibility with respect to remanding a case to the OPC. Rather than simply reversing and instructing the OPC to take a case to a screening panel (which remains an option), the chair may instead instruct the OPC to conduct additional investigation on potential rule violations. In such cases, we suggest that the OPC has another opportunity to dismiss, if the results of the investigation do not demonstrate a triable issue of a rule violation. At that point, the complainant would have one more opportunity to appeal the dismissal.

A

Excerpt from Ethics & Discipline Committee Report on Year 2022

1. Potential Reforms to Processes Related to Appeals from OPC Dismissals

There are several reasons why changes to the appeal process may be warranted. First is the large and seemingly increasing number of appeals, which require substantial time and resources. A table summarizing the number of appeals decided per year and the reversal rates for the reporting years from 2000 through 2022 is attached as Exhibit B.¹ Although many of the appeals are simple and can be resolved relatively quickly, many of the appeals have voluminous files and require extensive analysis, such that preparing a decision can end up taking many days. A related issue is turnaround time and backlog. Given the large number of appeals, many are not completed until six months or more after they are filed, leaving some of the parties frustrated with the delay.

Second, a significant majority of the appeals result in affirmance. As indicated on Exhibit B, the largest reversal rate occurred in 2002-2003, when nine out of 45 appeals (20%) were reversed and remanded to the screening panels. That number appears to be a bit of an outlier, however, because the reversals in most years have been far lower, ranging from 0%-14%. *See* Exhibit B. Because such a small number of appeals result in reversal, the question arises whether the appeal process provides sufficient benefits to justify the time and effort involved.

Third, even in the small number of cases that are reversed and remanded to a screening panel, the OPC sometimes disagrees with the outcome of the appeal. In such cases, when the case is presented to a screening panel, the OPC informs the panel that, despite the chair's or vice chair's reversal, it believes no violation has occurred or no discipline is warranted. The OPC typically states its position in the Notice, in the summary and recommendations memoranda provided to the panel, and/or during the hearing. Setting aside the issue of whether the appeal ruling or the OPC is correct on the merits, this means that the ultimate result is most often the same as if no appeal had been taken, i.e., the case is dismissed.² This is not to say that the OPC always disagrees with reversals or that screening panels always follow the OPC's position, but what is clear is that a significant majority of the cases reversed on appeal are dismissed on remand. Under these circumstances, it is reasonable to question whether the appeal process provides a meaningful level of review.

¹ Please note that the data in Exhibit B is not necessarily fully accurate due to slight differences in recording methods utilized by the OPC and past Committee chairs. It is intended only to provide a broad snapshot of trends in the appeal outcomes over time.

² This data is summarized in the final column of Exhibit B.

The following is a list of potential reforms aimed at reducing the number of appeals and attempting to ensure that the appeal process adds value to the disciplinary system as a whole. The suggestions below might be implemented individually or in combination with each other and, if any are to be implemented, rule changes will be required. Thus, while I provide these suggestions for your consideration and input, I anticipate that additional work and consideration by the OPC and the OPC Oversight Committee will be required.

- Eliminate the ability to appeal cases dismissed at the intake stage, on the OPC's Summary Review or, alternatively, adjust the standard of review from *de novo* to a more deferential standard, such as abuse of discretion. In its 2017 Report on the Utah Lawyer Discipline System (the "ABA Report"), the ABA stated that allowing appeals from the OPC's dismissal is valuable because "disciplinary counsel are not immune from making errors of judgment, and a limited appeal provides a useful check and balance for the system. It also helps alleviate perceptions that the profession is too protective of its own." ABA Report at 69. Based on this conclusion, the ABA recommended that all complaints, whether properly submitted at the time or not, should be subject to appeal. While this conclusion remains apt, I question whether Summary Review dismissals should be subject to review, both because the OPC likely should have some discretion in this regard and because most dismissals are affirmed in any case.
- Clarify the distinction between dismissal of a complaint versus a declination to prosecute, and clarify the scope of the OPC's discretion to decline to prosecute. Currently, the applicable rules states that the OPC may dismiss a complaint when it is:
 - frivolous, unintelligible, unsupported by fact, or fails to raise probable cause of any unprofessional misconduct;
 - barred by the statute of limitations;
 - more adequately addressed in another forum; or
 - one in which the OPC declines to prosecute.

RDDS 11-530(g)(1). This rule clearly indicates that the OPC may dismiss a complaint when it declines to prosecute, but it offers no guidance as to when the OPC may decline to prosecute. Although the OPC has internal policies about when it typically declines to prosecute, specificity could be added by rule. Clarification of these parameters would help participants in the system understand what types of complaints the OPC is unlikely to pursue and why. Relatedly, if the OPC's discretion to decline to prosecute is intended to be broad or unlimited, as it appears from the rule, then it might be possible to eliminate appeals from the OPC's declinations to prosecute. Even if such

appeals are retained, the standard of review should be adjusted to reflect to scope of the OPC's discretion as to declining to prosecute.

- Adjust the standard of review on all appeals from *de novo* to a more deferential standard, such as arbitrary and capricious or abuse of discretion. The *de novo* standard implies that the OPC lacks broad prosecutorial discretion with regard to both dismissals on the merits and declinations to prosecute.
- Adjust OPC intake procedures to include more plainly stated dismissal letters and increased contact, possibly by telephone, with complainants and respondents. This suggestion is based on a June 29, 2022 CLE presentation by the General Counsel of the Solicitors Regulation Authority ("SRA"), which oversees solicitor regulation in England and Wales.³ In the presentation, the General Counsel described new intake procedures adopted after identifying problems in their system including large case volumes, slow resolution of matters, inflexible criteria applied to dismissals, and poor customer experience. The new system includes simplified, risk-based assessment criteria, along with early contact and resolution efforts to provide guidance and explanations to complainants and respondents. The presenter described significant reductions in the number of complaints that were pursued beyond the intake phase as a result of the new procedures. While the changes enacted in England and Wales are not all practical for implementation in Utah, which has a much smaller population of regulated lawyers, many of the changes seem workable and potentially beneficial.
- Allow the chair or vice chair to request the OPC to conduct additional investigation on remand, particularly when a case has been dismissed on Summary Review. In some instances, the vice chairs or I have reversed cases where, if certain questions had been answered by the material in the file, perhaps by obtaining additional information from the complainant or by a seeking a response from the respondent, then a ready determination could be made as to whether an ethical violation had actually occurred. However, our review is generally confined to the evidence in the file and other, publicly available materials (such as case dockets and filings). If those materials are insufficient to answer whether a violation occurred, additional investigation may be warranted. Under the current rules, the chair and vice chairs on reversal may only "require the OPC to prepare a Notice (if necessary) and set the matter for hearing by a screening panel." RDDS 11-530(g)(2)(C).

³ The presentation, entitled "Innovations in Regulation: The SRA's Investigation, Assessment, and Early Resolution Process," is available to members of the National Organization of Bar Counsel at <https://www.nobc.org/webinars/past-webinars/>.

Although the OPC in many or most instances conducts additional investigation following remand regardless of the contents of the reversal ruling, it would be helpful if the chair or vice chair were able to call for additional investigation.

- Relatedly, if the OPC were to obtain information on remand that definitively established the absence of a rule violation, then perhaps OPC should have another opportunity to dismiss a case following additional investigation after a reversal. At that point, the matter could be appealed again, or the dismissal could be deemed final.
- Another possibility that Billy Walker raised with me is hiring an a staff attorney to assist with appeals, in the event numbers remain high and continue to grow. Although having four vice chairs has helped matters, the vice chairs all have full-time practices and aren't able to complete as many appeals as are needed.
- Impose additional requirements on complainants to complete an appeal. Although making it more difficult to navigate for the people it is intended to serve may not be ideal, requirements such as a brief memorandum articulating the bases for the appeal may prove beneficial. As it stands, all that is required to perfect an appeal is for a complainant to notify the Committee clerk of their intent to appeal.

As stated above, I present these suggestions to the Court to seek guidance and determine whether any particular suggestion or combination thereof seems reasonable, in which case we could pursue appropriate rule changes with the OPC and the OPC Oversight Committee for the Court's consideration.

B

1 **Rule 11-530. ~~Unprofessional conduct~~Professional misconduct Complaints.**

2 (a) **Filing.** The OPC or any person may initiate a disciplinary proceeding against any
3 Lawyer by filing a written Complaint in concise language setting forth the acts or
4 omissions claimed to constitute unprofessional conduct.

5 (1) If an individual initiates the Complaint, filing is complete when the Complaint is
6 delivered to the OPC office in hard copy or electronic form, or through the OPC's
7 website at opcutah.org.

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

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

13 (b) **Complaint form.** The Complaint need not be in any particular form or class and may
14 be by letter or other informal writing, although the OPC may provide a form to
15 standardize the format. The Complaint need not recite disciplinary rules, ethical canons,
16 or a prayer requesting specific disciplinary action. The Complainant must sign the
17 Complaint and include the Complainant's address and may list the names and addresses
18 of other witnesses. The Complaint must contain an unsworn declaration as to the
19 accuracy of the information in the Complaint: in compliance with Section 78B-18a-106 of
20 the Utah Code. Complaints filed by the OPC are not required to contain such a
21 declaration. A Complaint's substance prevails over the form.

22 (c) ~~Initial investigation.~~ Summary review. Upon receiving a Complaint, the OPC will
23 conduct a preliminary ~~investigation~~review to ~~ascertain~~determine whether the
24 ~~Complaint's~~Complaint includes allegations ~~are sufficiently clear that, if proved, would~~
25 constitute grounds for discipline and, if so, whether the Complaint should be investigated
26 further. If the Complaint does not include allegations ~~are not sufficiently clear that, if~~
27 proved, would constitute grounds for discipline, the OPC will dismiss the Complaint.

28 The OPC may also decline to prosecute the Complaint. If the allegations are not
29 sufficiently clear, the OPC may seek additional ~~facts~~information from the Complainant,
30 who must, upon the OPC's request, submit documents or writings containing any
31 additional ~~facts~~evidence. Within three months after filing a Complaint, the OPC must
32 advise the Complainant concerning ~~the initial investigation~~its summary review of the
33 Complaint.

34 ~~(d) Referral to Professionalism and Civility Counseling Board. The OPC may in~~
35 ~~connection with any conduct that comes to its attention refer any matter to the~~
36 ~~Professionalism and Civility Counseling Board established under Rule 14-303. Such~~
37 ~~referral may be in addition to or in lieu of any further proceedings related to the subject~~
38 ~~matter of the referral. Such referral should be in writing and at the discretion of the~~
39 ~~OPC may include any or all information included in the Complaint or additional facts~~
40 ~~submitted by the Complainant.~~

41 ~~(e)~~(d) Initial investigation. If the OPC determines that a Complaint warrants further
42 investigation, the OPC may seek additional information from the Complainant, the
43 Respondent, or both. Upon the OPC's request, the Complainant or the Respondent must
44 submit additional documents or writings to support their allegations and defenses.

45 (e) Additional investigation. If the Complaint is not dismissed following the OPC's
46 initial investigation, the OPC may conduct additional investigation, including gathering
47 additional information from the Complainant, Respondent, and third parties, and
48 including by requesting investigative subpoenas under Rule 11-523.

49 (f) Notice to Respondent. Upon completing ~~the preliminary~~its investigation, the OPC
50 will determine whether the Complaint can be resolved in the public interest, the
51 Respondent's interest, and the Complainant's interest. If the Complaint cannot be
52 resolved or if it alleges facts that, by their very nature, should be brought before the
53 screening panel, or if good cause otherwise exists to bring the matter before the screening
54 panel, the OPC must:

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

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

(3) ~~mail~~serve the documents ~~to the Respondent's~~by electronic mail or by mail on the Respondent at the address ~~as~~reflected in the Bar's records, with a copy to the Complainant.

~~(f)~~ Answer to Complaint Notice. Within 21 days after the Respondent is served with the ~~Complaint and~~ Notice, the Respondent must file with the OPC a signed, written answer explaining the facts surrounding the Complaint, together with all defenses and responses to the claims of possible misconduct. For good cause, the OPC may extend the time for filing an answer not to exceed an additional 28 days. ~~When~~After the answer is filed or, if the Respondent fails to respond, the OPC will either dismiss the Complaint or refer the case to a screening panel ~~to make for a determination or recommendation hearing.~~ The OPC must forward a copy of the answer to the Complainant.

~~(g) Dismissing the Complaint.~~

(h) Referral to Professionalism and Civility Counseling Board. The OPC may refer any matter that comes to its attention to the Professionalism and Civility Counseling Board established under Rule 14-303. Such referral may be in addition to or in lieu of any further proceedings related to the subject matter of the referral. Such referral should be in writing and – at the discretion of the OPC – may include any or all information included in the Complaint or additional material submitted by the Complainant.

(i) Dismissal or declination to prosecute; notification.

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

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

(B) barred by the statute of limitations~~;~~.

~~(C)~~(2) In its discretion, the OPC may decline to prosecute a Complaint without referral to a screening panel, including when:

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

(B) the Respondent has, within the previous two years, been sanctioned for conduct similar to that alleged in the Complaint, and the OPC does not believe that the Complaint would result in a more serious sanction;

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

(D) ~~one in which~~ the OPC ~~declines~~lacks adequate resources to ~~prosecute.~~thoroughly investigate the Complaint's allegations; or

~~(2) Notification and appeal.~~

~~(A)~~(E) the Complaint appears to be a litigation tactic motivated by a desire to harm an opposing party or obtain a strategic advantage in litigation.

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

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

~~(i)~~(A) notify the Complainant and the Respondent by email that the OPC has dismissed or declined to prosecute the Complaint;

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

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

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

(j) Appeal of dismissal or declination to prosecute.

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

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

~~(3)~~ (2) The Complainant may seek additional time to file the appeal or seek leave to include additional pages from the Committee chair, who will grant the request only on a showing of good cause.

~~(4)~~ (3) On appeal, the Committee chair ~~or a vice chair~~ will ~~conduct a de novo~~ review ~~of only~~ the file ~~either~~ compiled by the OPC.

~~(5)~~ (4) The Committee chair will reverse the OPC's declination to prosecute a Complaint for abuse of discretion. The Committee chair may reverse the OPC's dismissal of a Complaint when:

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

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

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

132 (5) After review, the chair may:

133 (A) affirm the dismissal or declination;

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

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

137 (D) reverse the dismissal or declination and require the OPC to or prepare a Notice
138 (if ~~necessary~~); a Notice has not already been prepared) and set the matter for
139 hearing by a screening panel.

140 (6) If the Committee chair reverses and requires the OPC to conduct additional
141 investigation, then the OPC may, after conducting the required investigation, either
142 dismiss the Complaint, or decline to prosecute, or prepare a Notice and set the matter
143 for hearing by a screening panel. If the OPC dismisses or declines to prosecute, the
144 Complainant may appeal under paragraph~~section~~ (j)(1) of this ~~R~~rule.

145 (7) In addition to or in lieu of affirming or reversing the dismissal, the chair may refer
146 a matter to the Professionalism and Civility Counseling Board.

147 (8) If the chair recuses, the chair will appoint ~~the~~ a Committee vice chair or a screening
148 panel chair or vice chair ~~or one of the screening panel chairs to to~~ review and
149 determine the appeal. In all other respects, the matter will proceed in accordance with
150 this article.

C

Rule 11-530. Professional misconduct Complaints.

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

(1) If an individual initiates the Complaint, filing is complete when the Complaint is delivered to the OPC office in hard copy or electronic form, or through the OPC's website at opc.utah.org.

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

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

(b) **Complaint form.** The Complaint need not be in any particular form or class and may be by letter or other informal writing, although the OPC may provide a form to standardize the format. The Complaint need not recite disciplinary rules, ethical canons, or a prayer requesting specific disciplinary action. The Complainant must sign the Complaint and include the Complainant's address and may list the names and addresses of other witnesses. The Complaint must contain an unsworn declaration as to the accuracy of the information in the Complaint in compliance with Section 78B-18a-106 of the Utah Code. Complaints filed by the OPC are not required to contain such a declaration. A Complaint's substance prevails over the form.

(c) **Summary review.** Upon receiving a Complaint, the OPC will conduct a preliminary review to determine whether the Complaint includes allegations that, if proved, would constitute grounds for discipline and, if so, whether the Complaint should be investigated further. If the Complaint does not include allegations that, if proved, would constitute grounds for discipline, the OPC will dismiss the Complaint. The OPC may also decline to prosecute the Complaint. If the allegations are not sufficiently clear, the OPC may seek

28 additional information from the Complainant, who must, upon the OPC's request,
29 submit documents or writings containing any additional evidence. Within three months
30 after filing a Complaint, the OPC must advise the Complainant concerning its summary
31 review of the Complaint.

32 (d) **Initial investigation.** If the OPC determines that a Complaint warrants further
33 investigation, the OPC may seek additional information from the Complainant, the
34 Respondent, or both. Upon the OPC's request, the Complainant or the Respondent must
35 submit additional documents or writings to support their allegations and defenses.

36 (e) **Additional investigation.** If the Complaint is not dismissed following the OPC's
37 initial investigation, the OPC may conduct additional investigation, including gathering
38 additional information from the Complainant, Respondent, and third parties, and
39 including by requesting investigative subpoenas under Rule 11-523.

40 (f) **Notice to Respondent.** Upon completing its investigation, the OPC will determine
41 whether the Complaint can be resolved in the public interest, the Respondent's interest,
42 and the Complainant's interest. If the Complaint cannot be resolved or if it alleges facts
43 that, by their very nature, should be brought before the screening panel, or if good cause
44 otherwise exists to bring the matter before the screening panel, the OPC must:

45 (1) prepare a Notice identifying with particularity the possible violation(s) of the Rules
46 of Professional Conduct or Licensed Paralegal Practitioner Rules of Professional
47 Conduct raised by the Complaint as the OPC has preliminarily determined;

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

49 (3) serve the documents by electronic mail or by mail on the Respondent at the address
50 reflected in the Bar's records, with a copy to the Complainant.

51 (g) **Answer to Notice.** Within 21 days after the Respondent is served with the Notice, the
52 Respondent must file with the OPC a signed, written answer explaining the facts
53 surrounding the Complaint, together with all defenses and responses to the claims of
54 possible misconduct. For good cause, the OPC may extend the time for filing an answer

not to exceed an additional 28 days. After the answer is filed or, if the Respondent fails to respond, the OPC will either dismiss the Complaint or refer the case to a screening panel for a hearing. The OPC must forward a copy of the answer to the Complainant.

(h) **Referral to Professionalism and Civility Counseling Board.** The OPC may refer any matter that comes to its attention to the Professionalism and Civility Counseling Board established under Rule [14-303](#). Such referral may be in addition to or in lieu of any further proceedings related to the subject matter of the referral. Such referral should be in writing and—at the discretion of the OPC—may include any or all information included in the Complaint or additional material submitted by the Complainant.

(i) **Dismissal or declination to prosecute; notification.**

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

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

(B) barred by the statute of limitations.

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

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

(B) the Respondent has, within the previous two years, been sanctioned for conduct similar to that alleged in the Complaint, and the OPC does not believe that the Complaint would result in a more serious sanction;

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

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

(E) the Complaint appears to be a litigation tactic motivated by a desire to harm an opposing party or obtain a strategic advantage in litigation.

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

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

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

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

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

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

(j) Appeal of dismissal or declination to prosecute.

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

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

(3) The Complainant may seek additional time to file the appeal or seek leave to include additional pages from the Committee chair, who will grant the request only on a showing of good cause.

(4) On appeal, the Committee chair will review only the file compiled by the OPC.

(5) The Committee chair will reverse the OPC's declination to prosecute a Complaint for abuse of discretion. The Committee chair may reverse the OPC's dismissal of a Complaint when:

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

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

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

(5) After review, the chair may:

(A) affirm the dismissal or declination;

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

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

(D) reverse the dismissal or declination and require the OPC to or prepare a Notice (if a Notice has not already been prepared) and set the matter for hearing by a screening panel.

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

(7) In addition to or in lieu of affirming or reversing the dismissal, the chair may refer a matter to the Professionalism and Civility Counseling Board.

131 (8) If the chair recuses, the chair will appoint a Committee vice chair or a screening
132 panel chair or vice chair to review and determine the appeal. In all other respects, the
133 matter will proceed in accordance with this article.