

1 **Rule 15-510. Prosecution and appeals.**

2 (a) Informal complaint of unprofessional conduct.

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

8 (a)(2) Form of informal complaint. The informal complaint need not be in any
9 particular form or style and may be by letter or other informal writing, although a form
10 may be provided by the OPC to standardize the informal complaint format. It is
11 unnecessary that the informal complaint recite disciplinary rules, ethical canons or a
12 prayer requesting specific disciplinary action. The informal complaint shall be signed by
13 the complainant and shall set forth the complainant's address, and may list the names
14 and addresses of other witnesses. The informal complaint shall be notarized and
15 contain a verification attesting to the accuracy of the information contained in the
16 complaint. In accordance with Rule 15-504(b), complaints filed by OPC are not required
17 to contain a verification. The substance of the informal complaint shall prevail over the
18 form.

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

24 (a)(4) Potential Referral to Professionalism Counseling Board. In connection with any
25 conduct that comes to their attention, whether by means of an informal complaint, a
26 preliminary investigation, or any other means, OPC counsel may, at its discretion, refer
27 any matter to the Professionalism Counseling Board established pursuant to ~~the~~
28 Supreme Court's Standing Order No. 7 Rule 14-303. Such referral may be in addition to
29 or in lieu of any further proceedings related to the subject matter of the referral. Such

30 referral should be in writing and, at the discretion of OPC counsel, may include any or all
31 information included in an informal complaint or additional facts submitted by a
32 complainant.

33 (a)(5) Notice of informal complaint. Upon completion of the preliminary investigation,
34 OPC counsel shall determine whether the informal complaint can be resolved in the
35 public interest, the respondent's interest and the complainant's interest. OPC counsel
36 and/or the screening panel may use their efforts to resolve the informal complaint. If the
37 informal complaint cannot be so resolved or if it sets forth facts which, by their very
38 nature, should be brought before the screening panel, or if good cause otherwise exists
39 to bring the matter before the screening panel, OPC counsel shall cause to be served a
40 NOIC by regular mail upon the respondent at the address reflected in the records of the
41 Bar. The NOIC shall have attached a true copy of the signed informal complaint against
42 the respondent and shall identify with particularity the possible violation(s) of the
43 Licensed Paralegal Practitioner Rules of Professional Conduct raised by the informal
44 complaint as preliminarily determined by OPC counsel.

45 (a)(6) Answer to informal complaint. Within 20 days after service of the NOIC on
46 the respondent, the respondent shall file with OPC counsel a written and signed
47 answer setting forth in full an explanation of the facts surrounding the informal
48 complaint, together with all defenses and responses to the claims of possible
49 misconduct. For good cause shown, OPC counsel may extend the time for the filing of
50 an answer by the respondent not to exceed an additional 30 days. Upon the answer
51 having been filed or if the respondent fails to respond, OPC counsel shall refer the
52 case to a screening panel for investigation, consideration and determination or
53 recommendation. OPC counsel shall forward a copy of the answer to the complainant.

54 (a)(7) Dismissal of informal complaint. An informal complaint which, upon
55 consideration of all factors, is determined by OPC counsel to be frivolous,
56 unintelligible, barred by the statute of limitations, more adequately addressed in
57 another forum, unsupported by fact or which does not raise probable cause of any
58 unprofessional conduct, or which OPC declines to prosecute may be dismissed by
59 OPC counsel without hearing by a screening panel. OPC counsel shall notify the
60 complainant of such dismissal stating the reasons therefor. The complainant may

61 appeal a dismissal by OPC counsel by filing written notice with the Clerk of the
62 Committee within 15 days after notification of the dismissal is mailed. Upon appeal, the
63 Committee chair shall conduct a de novo review of the file, either affirm the dismissal
64 or require OPC counsel to prepare a NOIC, and set the matter for hearing by a
65 screening panel. In the event of the chair's recusal, the chair shall appoint the vice
66 chair or one of the screening panel chairs to review and determine the appeal.

67 (b) Proceedings before Committee and screening panels.

68 (b)(1) Review and investigation. In their role as fact finders and investigators,
69 screening panels shall review all informal complaints referred to them by OPC counsel,
70 including all the facts developed by the informal complaint, answer, investigation and
71 hearing, and the recommendations of OPC counsel. Prior to any hearing OPC may file
72 with the clerk and serve on the respondent a summary of its investigation. If filed, the
73 summary shall identify with particularity any additional violations of the Licensed
74 Paralegal Practitioner Rules of Professional Conduct as subsequently determined by
75 OPC after service of the NOIC. If provided to the screening panel, the summary shall
76 also be provided to the respondent and shall serve as notice of any additional
77 violations not previously charged by OPC in the NOIC. If additional rule violations are
78 alleged in the summary, the summary shall be served on the respondent no less than
79 seven days prior to the hearing. In cases where a judicial officer has not addressed or
80 reported a respondent's alleged misconduct, the screening panel should not consider
81 this inaction to be evidence either that misconduct has occurred or has not occurred.

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

92 summary referenced in (b)(1), the respondent may file an additional written response
93 addressing those alleged violations prior to the hearing.

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

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

106 (b)(5) Rule Violations Not Charged by OPC. During the screening panel hearing,
107 but not after, the panel may find that rule violations not previously charged by OPC in
108 the NOIC or summary memorandum have occurred. If so, the screening panel shall
109 give the respondent a reasonable opportunity to respond during the hearing. The
110 respondent may address the additional charges at the hearing and also file with the
111 Clerk and serve on OPC within two business days of the hearing a written response to
112 the new charges along with supplemental materials related to the new charges. Prior
113 to making a determination or recommendation, the response and any supplemental
114 materials shall be reviewed and considered by at least a quorum of the panel
115 members present at the original hearing.

116 (b)(6) Hearing Record. The proceedings of any hearing before a screening panel
117 under this subsection (b) shall be recorded at a level of audio quality that permits an
118 accurate transcription of the proceedings. The Clerk shall assemble a complete
119 record of the proceedings and deliver it to the chair of the Committee upon the
120 rendering of the panel's determination or recommendation to the Committee chair.
121 The record of the proceedings before the panel shall be preserved for not less than
122 one year following delivery of the panel's determination or recommendation to the

123 chair of the Committee and for such additional period as any further proceedings on
124 the matter are pending or might be instituted under this section.

125 (b)(7) Screening panel determination or recommendation. Upon review of all the
126 facts developed by the informal complaint, answer, investigation and hearing, the
127 screening panel shall make one of the following determinations or recommendations:

128 (b)(7)(A) The preponderance of evidence presented does not establish that the
129 respondent was engaged in misconduct, in which case the informal complaint shall be
130 dismissed. A letter of caution may also be issued with the dismissal. The letter shall be
131 signed by OPC counsel or the screening panel chair and shall serve as a guide for the
132 future conduct of the respondent. The complainant shall also be confidentially notified
133 of the caution;

134 (b)(7)(B) The informal complaint shall be referred to the Diversion Committee for
135 diversion. In this case, the specific material terms of the Diversion Contract agreed
136 to by the respondent are to be recorded as a part of the screening panel record,
137 along with any comments by the complainant. The screening panel shall have no
138 further involvement in processing the diversion. The Diversion Committee shall
139 process the diversion in accordance with Rule 15-533.

140 (b)(7)(C) The informal complaint shall be referred to the Professionalism
141 Counseling Board established pursuant to the Supreme Court's Standing Order No.
142 7;

143 (b)(7)(D) The informal complaint shall be referred to the Committee chair with
144 an accompanying screening panel recommendation that the respondent be
145 admonished;

146 (b)(7)(E) The informal complaint shall be referred to the Committee chair with
147 an accompanying screening panel recommendation that the respondent receive
148 a public reprimand; or

149 (b)(7)(F) A formal complaint shall be filed against the respondent if the panel finds
150 there is probable cause to believe there are grounds for public discipline and that a
151 formal complaint is merited. A formal complaint shall also be filed if the panel finds
152 there was misconduct and the misconduct is similar to the misconduct alleged in a
153 formal complaint against the respondent that has been recommended by a screening

154 panel or is pending in district court at the time of the hearing.

155 (b)(8) Aggravation and Mitigation. The respondent and OPC may present
156 evidence and argument as to mitigating and aggravating circumstances during the
157 screening panel hearing, but this evidence shall not be considered until after the
158 panel has determined the respondent engaged in misconduct.

159 (b)(9) Multiple cases involving the same respondent. More than one case
160 involving the same respondent may be scheduled before the same panel. In
161 determining whether a rule has been violated in one case, a screening panel shall not
162 consider the fact it may be hearing multiple cases against the same respondent.

163 (b)(10) Recommendation of admonition or public reprimand. A screening panel
164 recommendation that the respondent should be disciplined under subsection (b)(7)(D)
165 or (b)(7)(E) shall be in writing and shall state the substance and nature of the informal
166 complaint and defenses and the basis upon which the screening panel has concluded,
167 by a preponderance of the evidence, that the respondent should be admonished or
168 publicly reprimanded. A copy of the recommendation shall be delivered to the
169 Committee chair and a copy served upon the respondent and OPC.

170 (c) Exceptions to screening panel determinations and recommendations. Within 30
171 days after the date of service of the determination of the screening panel of a
172 dismissal, dismissal with letter of caution, a referral to the Diversion Committee, a
173 referral to the Professionalism Counseling Board, or the recommendation of an
174 admonition, or the recommendation of a public reprimand, OPC may file with the Clerk
175 of the Committee exceptions to the determination or recommendation and may request
176 a hearing. The respondent shall then have 30 days within which to make a response,
177 and the response shall include respondent's exceptions, if any, to a recommendation
178 of an admonition or reprimand. Within 30 days after service of the recommendation of
179 an admonition or public reprimand on respondent, the respondent may file with the
180 Clerk of the Committee exceptions to the recommendation and may request a hearing,
181 and OPC shall have 30 days within which to file a response. The Committee chair may
182 allow a reply to any response. No exception may be filed to a screening panel
183 determination that a formal complaint shall be filed against a respondent pursuant to
184 Rule 15-511. All exceptions shall include a memorandum, not to exceed 20 pages,

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

187 (d) Procedure on exceptions.

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

190 (d)(2) Hearing requested. If a request for a hearing is made, the Committee chair
191 or a screening panel chair designated by the Committee chair shall serve as the
192 Exceptions Officer and hear the matter in an expeditious manner, with OPC counsel
193 and the respondent having the opportunity to be present and give an oral
194 presentation. The complainant need not appear personally.

195 (d)(3) Transcript Request. Upon request the Committee chair shall extend the
196 deadlines for filing exceptions or responses in order to allow a party time to obtain a
197 transcript of the screening panel proceedings. The cost of such transcript shall be
198 borne by the requesting party. The party obtaining the transcript shall file it with the
199 Clerk, together with an affidavit establishing the chain of custody of the record.

200 (d)(4) Burden of proof. The party who files exceptions under subsection (c) shall
201 have the burden of showing that the determination or recommendation of the
202 screening panel is unsupported by substantial evidence or is arbitrary, capricious,
203 legally insufficient or otherwise clearly erroneous.

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

207 (e) Final Committee disposition. Either upon the completion of the exceptions
208 procedure under subsection (d) or if no exceptions have been filed under
209 subsection(c), the Committee chair shall issue a final, written determination that
210 either sustains, dismisses, or modifies the determination or recommendation of the
211 screening panel. No final written determination is needed by the Committee chair to
212 a screening panel determination to a dismissal, a dismissal with a letter of caution,
213 or a referral to the Diversion Committee if no exception is filed.

214 (f) Appeal of a final Committee determination.

215 (f)(1) Within 30 days after service of a final, written determination of the Committee

216 chair under subsection (e), the respondent or OPC may file a request for review by the
217 Supreme Court seeking reversal or modification of the final determination of the
218 Committee. A request for review under this subsection shall only be available in cases
219 where exceptions have been filed under subsection (c). Dissemination of disciplinary
220 information pursuant to Rules 15-504(b)(12) or 15-516 shall be automatically stayed
221 during the period within which a request for review may be filed under this subsection.
222 If a timely request for review is filed, the stay shall remain in place pending resolution
223 by the Supreme Court unless the Court otherwise orders.

224 (f)(2) A request for review under this subsection (f) will be subject to the
225 procedures set forth in Title III of the Utah Rules of Appellate Procedure. Documents
226 submitted under this Rule shall conform to the requirements of Rules 27(a) and 27(b)
227 of the Utah Rules of Appellate Procedure.

228 (f)(3) A party requesting a transcription of the record below shall bear the costs.
229 The party obtaining the transcript shall file it with the Clerk of the Court, together
230 with an affidavit establishing the chain of custody of the record.

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

232 (f)(5) The party requesting review shall have the burden of demonstrating that the
233 Committee action was:

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

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

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

238 (f)(5)(D) Contrary to Articles 5 and 6 of Chapter 15, Rules Governing Licensed
239 Paralegal Practitioners.

240 (g) General procedures.

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

243 (g)(2) Service. To the extent applicable, service or filing of documents under this
244 Rule is to be made in accordance with Utah Rules of Civil Procedure 5(b)(1), 5(d) and
245 6(a).

246 (g)(3) Continuance of disciplinary proceedings. A disciplinary proceeding may be

247 held in abeyance by the Committee chair prior to the filing of a formal complaint when
248 the allegations or the informal complaint contain matters of substantial similarity to
249 the material allegations of pending criminal or civil litigation in which the respondent
250 is involved.

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