

Agenda

Supreme Court's Advisory Committee on the Rules of Professional Conduct

June 18, 2018
5:00 to 7:00 p.m.

Administrative Office of the Courts
Scott M. Matheson Courthouse
450 South State Street
Salt Lake City
Judicial Council Room, Suite N31

Welcome and approval of minutes	Tab 1	Steve Johnson, Chair
Rule 8.4(g) and Standards of Professionalism and Civility	Tab 2	Simón Cantarero (subcommittee chair), Billy Walker, Vanessa Ramos, Joni Jones, and Trent Nelson
Supreme Court Standing Order 7	Tab 3	Tim Conde (subcommittee chair), Don Winder, Cristie Roach, Padma Veeru-Collings, and Judge James Gardner
Next meeting: August 20, 2018		Steve Johnson

Committee Webpage: <http://www.utcourts.gov/committees/RulesPC/>

Tab 1

**MINUTES OF THE SUPREME COURT'S
ADVISORY COMMITTEE ON THE RULES OF PROFESSIONAL CONDUCT**

April 23, 2018

DRAFT

The Meeting commenced at 5:00 p.m.

Committee Members Attending:

Steven G. Johnson, Chair
Daniel Brough – via telephone
Thomas B. Bruner
J. Simon Cantarero
Tim Conde
Hon. James Gardner
Joni Jones
Hon. Darold J. McDade –via telephone
Timothy Merrill – via telephone
Vanessa M. Ramos
Austin Riter
Cristie Roach
Gary G. Sackett
Padma Veeru-Collings – via telephone
Billy Walker
Donald Winder

Katherine Venti (recording secretary)

Guests:

Patricia Owen

Members Excused:

Hon. Trent D. Nelson
Phil Lowry

Staff:

Nancy Sylvester

I. Welcome and Approval of Minutes

Mr. Johnson welcomed the Committee.

Motion on the Minutes: Billy Walker moved to approve the minutes from March 19, 2018; Cristie Roach seconded the motion. The motion to approve carried unanimously.

II. Rule 8.4(g) and (h) and Standards of Professionalism and Civility, Standard 3

Mr. Cantarero reported regarding Standard No. 3 to the Standards of Professionalism and Civility. Mr. Cantarero referred to Exhibits B, C, D, and E of the Committee Packet to show various proposed changes that would align Standard 3 with the proposed changes made to Rule 8.4(g) and (h) and make the Standard more compulsory, rather than aspirational. Mr. Walker commented that the Standards were initially meant to be aspirational, but over time, steps were taken to move the Standards to be more compulsory, for example, by oath. Mr. Walker explained other evolutions in the applicability of the Standards.

Mr. Walker further explained that the Standards were meant to apply to attorneys' behavior within the court system, including court, court staff, and other lawyers.

The Committee discussed the having the revisions to Standard 3 be compulsory or aspirational.

Motion on proposed changes to Standard 3, Version 3 (Exhibit D to Committee Packet): Timothy Merrill moved to adopt Version 3 (Exhibit D) of the Standards. The motion was not seconded and further discussion continued.

In response, Mr. Winder proposed other changes to Version No. 4 (Exhibit E to the committee Packet). Mr. Winder's proposed changes included putting a period after the word "conduct," in the second sentence. Mr. Winder also proposed referring to Standard No. 1, which lists and defines participants. A discussion regarding Mr. Winder's suggested word changes continued.

Motion on Proposed change to Standard 3, Version 4 (Exhibit E to Committee Packet): Mr. Winder moved to adopt Version 4, with selected changes to Standard 3, as set forth in the attached Revised Version 4. Mr. Winder's motion recognized that he was not making any additional changes to the proposed changes in the Comment section of Version 4. Judge Gardner Seconded the Motion. The motion passed unanimously.

III. Supreme Court Standing Order No. 7 Update

Tim Conde reported on the work of the Subcommittee on Standing Order No. 7. Standing Order No. 7 allows lawyers, judges, and/or the OPC to refer a complaint regarding uncivil behavior to the Professionalism Counseling Board. The issue the Subcommittee was exploring was the kind of "teeth" the Board has regarding such complaints. The subcommittee's task was to (1) evaluate the process and (2) evaluate whether there should be an anonymous avenue to lodge judge referrals to the Board.

The Committee discussed the detailed process regarding a referral to the Board under Standing Order No. 7. The Committee also discussed issues regarding response, or lack thereof, by attorneys to referred complaints made to the Board. Mr. Bruner noted that the “teeth” regarding a referral may be found in the proposed amendments to Rule 8.4(h).

Judge Gardner commented on the feasibility of making an anonymous referral and having the counseling be helpful. Judge Gardner also mentioned that judges may be reluctant to make referrals in ongoing cases due to concerns regarding recusal. Judge Gardner recommended education on the Standing Order as he believes the parameters of the Standing Order may not be widely known.

A discussion ensued regarding whether language should be added to the Standing Order that a referral to the Board by a judge will not act as the sole basis for recusal.

The discussion continued on whether the Standard should be revised to add language that failure to respond may result in an automatic referral to the OPC. Committee members also discussed Rule 8.4(h), which will be new and may be sufficient to give “teeth.” Some committee members advocated giving 8.4(h) some time to go into effect and to take “baby steps” on rolling out changes to Standing Order No. 7.

Mr. Conde requested a straw poll on which possible option to work on: (1) “baby steps” (2) amending the Standing Order; and (3) the filing of miscellaneous cases and subpoena power for attorneys who do not show after being requested appearance by the Board. The “baby steps” approach was the preferred method.

The Subcommittee will work on language regarding baby steps to the Standard. The Subcommittee will also incorporate language regarding recusal of judges who make referrals. The Subcommittee will reconvene with Board members to vet possible proposals and language.

A discussion ensued regarding the specific charge of the Court to the Committee and whether Standing Order No. 7 should be included in the Rules of Professionalism and Civility or as a subsequent rule, such as 14-302 or in the 14-500 series.

The Subcommittee will attempt to get a revised version of Standing Order No. 7 to Ms. Sylvester by May 16, 2018 and report back to the Committee on May 21, 2018.

IV. Next Meeting:

The next meeting is scheduled for May 21, 2018 at 5:00 p.m.

V. Adjournment

The meeting adjourned at 6:43 p.m.

ATTACHMENT TO APRIL 23, 2018 MINUTES

Standards of Professionalism and Civility – Version 4 REVISED AT APRIL 23, 2018 MEETING:

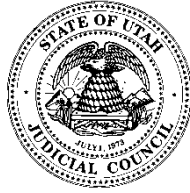
3. Lawyers shall not, without an adequate factual basis, attribute to other counsel or the court improper motives, purpose, or conduct. Lawyers ~~should~~ shall avoid hostile, demeaning, or humiliating, intimidating, harassing, or discriminatory words in written and oral communications conduct with all other counsel, parties, judges, witnesses, and other participants in all proceedings ~~adversaries, other lawyers, paralegals, or administrative staff~~. Neither written submissions nor oral presentations should disparage the integrity, intelligence, morals, ethics, or personal behavior of any such participant ~~an adversary another legal professional~~ unless such matters are directly relevant under controlling substantive law.

Comment: Hostile, demeaning, and humiliating communications include all expressions of discrimination on the basis of race, color, religion, gender, pregnancy, childbirth or pregnancy-related conditions, sexual orientation, gender identity, marital status, age, handicap disability, veteran status, or national origin, ethnicity, or socioeconomic status, or casting aspersions on physical traits or appearance. Lawyers should refrain from acting upon or manifesting bigotry, discrimination, or prejudice toward any participant in the legal process, even if a client requests it.

Lawyers should refrain from expressing scorn, superiority, or disrespect. Legal process should not be issued merely to annoy, humiliate, intimidate, or harass. Special care should be taken to protect witnesses, especially those who are disabled or under the age of 18, from harassment or undue contention.

Cross-References: R. Prof. Cond. Preamble [5]; R. Prof. Cond. 3.1; R. Prof. Cond. 3.5; R. Prof. Cond. 8.4; R. Civ. P. 10(h); R. Civ. P. 12(f); R. App. P. 24(k); R. Crim. P. 33(a); Fed. R. Civ. P. 12(f).

Tab 2



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

MEMORANDUM

Richard H. Schwermer
State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

To: Advisory Committee on the Utah Rules of Professional Conduct
From: Nancy Sylvester *Nancy J. Sylvester*
Date: June 15, 2018
Re: Rule 8.4 and Standards of Professionalism and Civility

The Committee has a few remaining questions to answer regarding Rule 8.4 and Standard of Professionalism and Civility 3:

- 1) What do we mean by "age" in Comment [3]? Utah Code §34A-5-106 says age discrimination only applies to over 40 years.
- 2) Should we match the categories in 8.4 comment [3] and Standard 3 to 34A-5-106?
- 3) What should we do about Comment 2, which says, "Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice?" Does it comport well with what we've done in Rules 8.4(g), (h), and Comment [3]?

The mission of the Utah judiciary is to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law.

Comparison of Rules and Statute Regarding Protected Classes

<u>Model Rule</u>	<u>Current Rule</u>	<u>Proposed Comment 3</u>	<u>UCA §34A-5-106</u>	<u>Proposed Standard 3</u>
race	race	race	race	race
sex	sex	sex	sex	gender
religion	religion	religion	religion	religion
national origin	national origin	national origin	national origin	national origin
ethnicity		ethnicity		ethnicity
disability	disability	disability	disability	disability
age	age	age	age if 40 or older	age
sexual orientation	sexual orientation	sexual orientation	sexual orientation	sexual orientation
gender identity	gender identity	gender identity	gender identity	gender identity
marital status		marital status		marital status
socioeconomic status	socioeconomic status	socioeconomic status		socioeconomic status
		color	color	color
			pregnancy, childbirth or pregnancy- related conditions	pregnancy, childbirth or pregnancy- related conditions casting aspersions on physical traits or appearance

1 **Rule 8.4. Misconduct.**

2 It is professional misconduct for a lawyer to:

3 (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another
4 to do so, or do so through the acts of another;

5 (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as
6 a lawyer in other respects;

7 (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

8 (d) engage in conduct that is prejudicial to the administration of justice;

9 (e) state or imply an ability to influence improperly a government agency or official or to achieve
10 results by means that violate the Rules of Professional Conduct or other law; ~~or~~

11 (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial
12 conduct or other law;

13 (g) engage in conduct that amounts to unlawful discrimination or harassment under applicable local,
14 state or federal law, irrespective of the number of employees; or

15 (h) egregiously violate or engage in a pattern of repeated violations of the Standards of
16 Professionalism and Civility.

17 Comment

18 [1] Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional
19 Conduct or knowingly assist or induce another to do so through the acts of another, as when they request
20 or instruct an agent to do so on the lawyer's behalf. Paragraph (a), however, does not prohibit a lawyer
21 from advising a client concerning action the client is legally entitled to take.

22 [1a] A violation of paragraph (a) based solely on the lawyer's violation of another Rule of Professional
23 Conduct shall not be charged as a separate violation. However, this rule defines professional misconduct
24 as a violation of the Rules of Professional Conduct as the term professional misconduct is used in the
25 Supreme Court Rules of Professional Practice, including the Standards for Imposing Lawyer Sanctions. In
26 this respect, if a lawyer violates any of the Rules of Professional Conduct, the appropriate discipline may
27 be imposed pursuant to Rule 14-605.

28 [2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses
29 involving fraud and the offense of willful failure to file an income tax return. However, some kinds of
30 offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving
31 "moral turpitude." That concept can be construed to include offenses concerning some matters of
32 personal morality, such as adultery and comparable offenses, that have no specific connection to fitness
33 for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer
34 should be professionally answerable only for offenses that indicate lack of those characteristics relevant
35 to law practice. Offenses involving violence, dishonesty, breach of trust or serious interference with the
36 administration of justice are in that category. A pattern of repeated offenses, even ones of minor
37 significance when considered separately, can indicate indifference to legal obligation.

38 [3] A lawyer who, in the course of representing a client, knowingly manifests by words or conduct bias
39 or prejudice based upon race, color, sex, pregnancy, childbirth or pregnancy-related conditions, age,
40 religion, national origin, ethnicity, disability, sexual orientation, ~~age~~, ~~sexual orientation~~, gender identity,
41 marital status, or socioeconomic status, ~~violates may violate~~ paragraph (d) when such actions are
42 prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not
43 violate paragraph (d). ~~A trial judge's finding that peremptory challenges were exercised on a~~
44 ~~discriminatory basis does not alone establish a violation of this rule.~~

45 ~~[3a] The Standards of Professionalism and Civility approved by the Utah Supreme Court are intended~~
46 ~~to improve the administration of justice. An egregious violation or a pattern of repeated violations of the~~
47 ~~Standards of Professionalism and Civility may support a finding that the lawyer has violated paragraph~~
48 ~~(d).~~

49 ~~[4] The substantive law of antidiscrimination and anti-harassment statutes, ordinances, and case law~~
50 ~~guides the application of paragraph (g), except that for purposes of determining a violation of paragraph~~
51 ~~(g), the size of a law firm or number of employees is not a defense. Paragraph (g) does not limit the~~
52 ~~ability of a lawyer to accept, decline, or withdraw from a representation in accordance with Rule 1.16, nor~~
53 ~~does paragraph (g) preclude legitimate advice or advocacy consistent with these rules. Discrimination or~~
54 ~~harassment does not need to be previously proven by a judicial or administrative tribunal or fact-finder in~~
55 ~~order to allege or prove a violation of this rule. Lawyers may engage in conduct undertaken to discuss~~
56 ~~diversity and inclusion, including any benefits and challenges, without violating this rule. Implementing~~
57 ~~initiatives aimed at recruiting, hiring, retaining and advancing employees of diverse backgrounds or from~~
58 ~~historically underrepresented groups, or sponsoring diverse law student organizations, are not violations~~
59 ~~of paragraph (g).~~

60 ~~[4a] A lawyer does not violate paragraph (g) by limiting the scope or subject matter of the lawyer's~~
61 ~~practice or by limiting the lawyer's practice to members of underserved populations in accordance with~~
62 ~~these rules and other law.~~

63 ~~[5] A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does~~
64 ~~not alone establish a violation of this rule.~~

65 ~~[4] [6] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that~~
66 ~~no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity,~~
67 ~~scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.~~

68 ~~[5] [7] Lawyers holding public office assume legal responsibilities going beyond those of other~~
69 ~~citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers.~~
70 ~~The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian,~~
71 ~~agent and officer, director or manager of a corporation or other organization.~~

72 ~~[8] This rule differs from ABA Model Rule 8.4.~~

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Tab 3

Utah Supreme Court Standing Order No. 7 **(As to establishment of a program of professionalism counseling** **for members of the Utah State Bar)**

Effective April 1, 2008; Amended June 12, 2012

The Court intends to establish a board (hereinafter the "Board") consisting of seven counselors to counsel and educate members of the Bar concerning the Court's Standards of Professionalism and Civility (hereinafter the "Standards"). Specifically, the Board's purposes are: (1) to counsel members of the Bar, in response to complaints by other lawyers, referrals from judges, or referrals from counsel in the Office of Professional Conduct ("OPC counsel"); (2) to provide counseling to members of the Bar who request advice on their own obligations under the Standards; (3) to provide CLE on the Standards; (4) to publish advice and information relating to the work of the Board.

Board Composition

Appointees shall serve on a volunteer basis and will be appointed based upon stature in the legal community and experience in legal professionalism matters. A minimum of one of the seven appointees shall have transactional experience, and at least one attorney shall have small firm or sole practitioner experience. Board members shall serve for staggered terms of no fewer than three years for continuity and so that each Board member has the opportunity to develop expertise on the Standards. The Court will appoint one of the Board members as chair.

Submission of Complaints and Questions to the Board

The Board is authorized to consider complaints by lawyers concerning the professionalism of other lawyers, referrals from judges or OPC counsel, and questions about professionalism from practicing lawyers. In the absence of a referral from a judge or OPC counsel, the Board shall not consider questions or complaints from clients or members of the public.

If a lawyer wishes to lodge a complaint with the Board concerning the conduct of another member of the Bar, the complaint must be in writing (i.e., by letter or email) and signed by the complainant. The Board shall not consider anonymous complaints about lawyers. Questions or requests for counseling from a lawyer concerning his or her own conduct need not be in writing but may be made by telephone or a personal visit with members of the Board. Referrals from judges may be directed by telephone. Referrals from OPC counsel should be in writing.

Procedure

The Board is authorized to develop its own procedures based upon this Standing Order, the purposes for which the program is established, and upon the Board's experience. Adherence to formal rules of procedure or evidence is not required. The Board may address a complaint or referral by whatever means it determines is best. In matters where the Board deems it helpful, matters may be addressed by panels of three. The

Board should generally notify the complainant or, in the case of a referral, the judge or OPC counsel, that the complaint or referral has been received within thirty days of the complaint. The notice should indicate the manner in which the Board intends to address the issue along with the general timing that is anticipated.

Confidentiality

Except as authorized in this Standing Order or in Rule 14-515(a)(4) of the Supreme Court Rules Governing the Utah State Bar, the contents of statements, communications or opinions made by any participant in the program shall be kept confidential. Board members may freely communicate with a referring judge or with OPC counsel in connection with any matter that has been referred to the Board. The Board may, in its discretion, inform the lawyer who is subject to a complaint or referral of relevant factual assertions that the Board may address. This may, at the discretion of the Board, include a copy of the complaint or written referral. The Board may also, in its discretion, investigate underlying facts or counsel lawyers by reference to facts or assertions learned in the process of its efforts. Board members are permitted to communicate directly with lawyers, judges, or clients involved in the dispute concerning the relevant facts and the application or interpretation of the Standards.

Resolution and Written Advisories

Resolution may be by written advisory to the lawyers involved, by a face-to-face meeting with the lawyers, or through counsel provided by telephone or other means. Should it determine to resolve the matter through a written advisory, reference should be made to individual Standards. A copy of each written advisory (including identifying information) shall be provided to the lawyers involved in the matter and may, at the discretion of the Board, also be provided to OPC counsel. Where a matter has come to the Board by means of judicial referral the Board shall, upon resolution of the matter, report to the judge the manner in which the matter was resolved, including, where applicable, a copy of the written advisory that includes identifying information. Further, the Board may in its discretion provide a copy of a written advisory (including identifying information) to supervisors, employers, or agencies whose lawyers have been the subject of a complaint. Also, the panel is permitted to disclose the general nature of the situation for the benefit of members of the Bar and the public (without identifying names or uniquely identifying facts such as the parties to a proceeding) and a sufficient description of the conduct at issue to convey the basis for its advice, through publication or other means of public dissemination including CLE presentations or posting to a web page.

The Duty of Good Faith

Attorneys seeking the assistance of the Board shall do so only in good faith and not for the purposes of harassment or to attain a strategic advantage. The Board is authorized to terminate any proceeding or referral that it believes has been initiated or utilized in bad faith or for an improper purpose.

Publication

The Board shall report annually to the Court concerning its operation, the Standards it has interpreted, the advice it has given, and any trends it believes important for the Court to know about. It should also make suggestions to the Court as to needed changes to the Standards.

The Board shall periodically publish summaries or selected portions of its advisories in the Utah Bar Journal for the benefit of practicing lawyers. Published advisories shall not include the names or uniquely identifying facts such as the parties to a proceeding. Also, the Board shall maintain a web page under the auspices of the Court or the Bar that provides a database of the advisories transmitted to the Utah Bar Journal for Publication.

Complaints should be sent to James Ishida, Appellate Court Administrator, Utah Supreme Court, P.O. Box 140210, Salt Lake City, UT 84114-0210; email address jamesi@utcourts.gov

Proposed Rule 14-302 of the Supreme Court Rules of Professional Practice

Rule 14-302. Professionalism and Civility Counseling for Utah State Bar Members.

Preamble

To ensure members of the Utah State Bar are committed to the Standards of Professionalism and Civility (the "Standards"), the Utah Supreme Court has established and maintains a board (the "Board") for the purpose of receiving, evaluating, addressing, and resolving complaints made by other lawyers and judges concerning another Utah State Bar member's professionalism and civility. The Board's specific purposes are: (1) to counsel members of the Bar, in response to complaints by other lawyers, referrals from judges, or referrals from counsel in the Office of Professional Conduct ("OPC Counsel"); (2) to provide counseling to members of the Bar who request advice on their own obligations under the Standards; (3) to provide CLE on the Standards; and (4) to publish advice and information relating to the work of the Board.

(a) *Composition of the Board.* The Board, which shall consist of seven Utah State Bar members who shall act as counselors to counsel and educate members of the Bar concerning the Standards. Appointees shall serve on a volunteer basis and will be appointed by the Utah Supreme Court based upon stature in the legal community and experience in legal professionalism and civility matters. A minimum of one of the seven appointees shall have transactional experience, and at least one lawyer shall have small firm or sole practitioner experience. Board members shall serve for staggered terms of no fewer than three years for continuity and so that each Board member has the opportunity to develop expertise on the Standards. The Utah Supreme Court will appoint one of the Board members as chair.

(b) *Submission of Complaints and Questions to the Board.*

(1) The Board is authorized to consider complaints by lawyers concerning the professionalism and civility of other lawyers, referrals from judges or OPC counsel, and questions about professionalism and civility from practicing lawyers. In the absence of a referral from a judge or OPC Counsel, the Board shall not consider questions or complaints from clients or members of the public.

(2) To submit a complaint with the Board concerning the conduct of another member of the Bar (the "Subject Lawyer"), the complaining lawyer (the "Complainant") shall deliver a letter or email to the Board that contains:

- (i) Name of and contact information for the Subject Lawyer and Complainant;
- (ii) A description of the conduct about which the complainant is complaining, including the date(s) of the conduct; and
- (iii) The Complainant shall affix a signature to the complaint.

(3) The Board shall not consider anonymous complaints about lawyers.

(4) Questions or requests for counseling from a lawyer concerning his or her own conduct need not be in writing but may be made by telephone or a personal visit with members of the Board. Referrals from judges may be directed by telephone.

(5) Lawyers seeking the assistance of the Board shall do so only in good faith and not for the purposes of harassment or to attain a strategic advantage. The Board is authorized to terminate any proceeding or referral that it believes has been initiated or utilized in bad faith or for an improper purpose.

(c) Procedure.

(1) The Board is authorized to develop its own procedures based upon this Rule, the purposes for which the program is established, and upon the Board's experience. Adherence to formal rules of procedure or evidence is not required. The Board may address a complaint or referral by whatever means it determines is best. In matters where the Board deems it helpful, matters may be addressed by panels of three. The Board should generally notify the Complainant or, in the case of a referral, the judge or OPC Counsel, that the complaint or referral has been received within thirty days of the complaint. The notice should indicate the manner in which the Board intends to address the issue along with the general timing that is anticipated.

(2) Except as authorized in this Standing Order or in Rule 14-515(a)(4) of the Utah Supreme Court Rules Governing the Utah State Bar, the contents of statements, communications or opinions made by any participant shall be kept confidential. Board members may freely communicate with a referring judge or with OPC counsel in connection with any matter that has been referred to the Board. The Board may, in its discretion, inform the Subject Lawyer of relevant factual assertions that the Board may address. This may, at the discretion of the Board, include a copy of the complaint or written referral. The Board may also, in its discretion, investigate underlying facts or counsel lawyers by reference to facts or assertions learned in the process of its efforts. Board members are permitted to communicate directly with lawyers, judges, or clients involved in the dispute concerning the relevant facts and the application or interpretation of the Standards.

(3) Any Complainant's failure or refusal to respond to a request or instruction from the Board may result in the Board reporting such failure or refusal to the OPC, which may result in a finding that the complainant has violated the Utah Rule of Professional Conduct, including, but not limited to Rule 8.4(h).

(d) Resolution and Written Advisories. The Board may resolve the matter as it deems appropriate, including, but not limited to, by (i) issuing a written advisory to the lawyers involved, (ii) by a face-to-face meeting with the lawyers and the Board, or (iii) through counseling the Board provides by telephone or other means. Should the Board determine to resolve the matter through a written advisory, reference should be made to individual Standards. The Board shall provide a copy of each written advisory (including identifying information) to the lawyers involved in the matter and may, at its discretion, also provide a copy to OPC counsel. Where a matter has come to the Board by means of judicial referral the Board shall, upon resolution of the matter, report to the judge the manner in which the matter was resolved, including, where applicable, a copy of the written advisory that includes identifying information. Further, the Board may in its discretion provide a copy of a written advisory (including identifying information) to supervisors, employers, or agencies whose lawyers have been the subject of a complaint.

(e) Publication and Reporting. The Board is permitted to disclose the general nature of the situation for the benefit of members of the Bar and the public (without identifying names or uniquely identifying facts such as the parties to a proceeding) and a sufficient description of the conduct at issue to convey the basis for its advice, through publication or other means of public dissemination including CLE presentations or posting to a webpage. In addition, the Board shall report annually to the Utah Supreme Court concerning its operation, the Standards it has interpreted, the advice it has given, and any trends it believes important for the Utah Supreme Court to know about. It should also make suggestions to the Utah Supreme Court as to needed changes to the Standards. The Board shall periodically publish summaries or selected portions of its advisories in the Utah Bar Journal for the benefit of practicing lawyers. Published advisories shall not include the names or uniquely identifying facts such as the parties to a proceeding. The Board shall also maintain a web page under the auspices of the Utah Supreme Court or the Bar that provides a database of the advisories transmitted to the Utah Bar Journal for publication.