

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

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

(a) Board Authority. The Utah Supreme Court has established and maintains a Professionalism and Civility Counseling Board (hereafter, 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 shall have authority to (1) 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) provide counseling to members of the Bar who request advice on their own obligations under the Court’s Standards of Professionalism and Civility (hereafter, the “Standards”); (3) provide CLE on the Standards; and (4) publish advice and information relating to the work of the Board.

(b) Composition of the Board. The Board 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 be appointed by the Utah Supreme Court based upon stature in the legal community and experience in legal professionalism and civility matters and serve on a volunteer basis. 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.

(c) 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.

(d) 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 failure or refusal by the Subject Lawyer 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 Subject Lawyer has violated the Utah Rule of Professional Conduct, including, but not limited to Rule 8.4(h).

(e) 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.

(f) 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.

**Proposed Amendment to Rule 14-510(a)(4) of the
Rules of Lawyer Discipline and Disability**

Rule 14-510(a)(4). Potential Referral to Professionalism Counseling Board.

In connection with any conduct that comes to their attention, whether by means of an informal complaint, a preliminary investigation, or any other means, OPC counsel may, at its discretion, refer any matter to the Professionalism Counseling Board established pursuant to ~~the Supreme Court's Standing Order No. 7~~ **Rule 14-302 of the Supreme Court's Rules of Professional Practice**. 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 OPC counsel, may include any or all information included in an informal complaint or additional facts submitted by a complainant.

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