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# Lawyer Discipline Rules Amended

by Keith A. Call

A couple of months ago (December 18, 2020, to be exact), you probably received an email notice from the Utah Bar letting you know that sixty-nine rules relating to lawyer discipline and disability had been amended. Utah Court of Appeals Judge Diana Hagen and I predicted this – at least to some extent. Last year we reported on an American Bar Association report that recommended several reforms to Utah’s lawyer discipline system. We also reported on the Utah Supreme Court’s formation of a new Oversight Committee for the Office of Professional Conduct and predicted there would be more changes coming. *See* Diana Hagen and Keith A. Call, *Utah Supreme Court Forms OPC Oversight Committee*, 32 UTAH B.J. 32 (May/June 2019). Those changes are now here.

I know you didn’t read all those amendments – likely because you anticipated I would give you a neat summary of the key changes. You are so smart! Here is the summary you were anticipating.

## Disciplinary Rules Streamlined and Consolidated into One Place

Before the 2020 amendments, rules governing disciplinary actions were found in two different chapters of the Utah Code of Judicial Administration. Now the disciplinary rules have been consolidated into a single chapter, making it easier to reference and find what you may be looking for. *See* Utah Code Jud. Admin. R. 11-501 *et. seq.*

The amended rules also clarify some confusing concepts from the prior rules. For example, a “Complaint,” formerly referred to as an “Informal Complaint,” refers to any written allegation of lawyer misconduct that is submitted to or initiated by the Office of Professional Conduct (OPC). *Id.* R. 11-502(g); *see also id.* R. 11-505. A “Notice,” formerly known as a “Notice of Informal Complaint” or NOIC, is what the OPC sends to the respondent/attorney, which identifies for the lawyer the possible violations of the Rules of Professional Conduct. *Id.* R. 14-502(n). A lawsuit filed by the OPC in district court alleging lawyer misconduct, formerly known as a “formal complaint,” is now referred to as an “Action.” *Id.* R. 11-502(a).

The amendments also made a host of other changes too numerous to fully explain here. Many of them are purely technical or clarifying changes. Some of the more substantive changes address the statute of limitations for disciplinary complaints, complaint procedures, procedures for answering a complaint, screening panel make-up and responsibilities, disclosure, recusal and disqualification of screening panel members, subpoena rights and procedures, screening panel hearing procedures, procedures for appealing the determination of a screening panel or Ethics Committee Chair, limitations on screening panel members’ ability to represent clients in disciplinary proceedings, procedures after a lawyer is found guilty or enters a plea to a crime, and requirements of and conditions for probation or diversion.

## Continuation of OPC Oversight Committee

The Utah Supreme Court created a new Oversight Committee for the OPC in its March 2019 rule changes to help implement the ABA’s recommendations. *See* Utah Code Jud. Admin. R. 11-503. This is a five-member committee appointed by the supreme court, with the Bar’s Executive Director serving as a non-voting member. *Id.* The 2020 rule changes continue the Oversight Committee and expand its role. Among other things, the Oversight Committee is required to implement performance metrics and conduct annual evaluations of the OPC, approve the OPC’s budget, recommend applicable rule changes to the supreme court, recommend a Chief Disciplinary Counsel for the OPC to be appointed by the supreme court, monitor the OPC’s workload and recommend to the supreme court adequate staffing, review

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and consider public input, and make appropriate recommendations to the supreme court regarding complaints about the OPC's Chief Disciplinary Counsel. *Id.* R. 11-503(b)–(c).

### OPC Independence from Bar

Some of the rule changes are designed to foster greater independence between the Office of Professional Conduct and the Utah State Bar. For example, under the former rules, the OPC's "senior counsel" was appointed by the Bar Commission. Now, the OPC's "Chief Disciplinary Counsel" is hired by and "serves at the pleasure of the Utah Supreme Court." *See* Utah Code Jud. Admin. R. 11-520. Under the former rules, the OPC's senior counsel worked with the executive director of the Bar to formulate a proposed budget for the OPC, which had to be approved by the Bar Commission. Now the OPC's Chief Disciplinary Counsel develops a budget for approval by the Oversight Committee, which then submits the budget to the supreme court and the Bar. *Id.* R. 11-503(b)(2)(B); *id.* R. 11-520(b)(2). The Bar Commission must ratify the budget for the OPC as approved by the Oversight Committee unless the Bar Commission petitions the Utah Supreme Court for modifications. *Id.* R. 14-207(a).

You may notice some related changes that are not spelled out in the rules. For example, the OPC's website is no longer integrated with the Bar's website. Rather, the OPC now has its own independent website. If you try to find the OPC on the Bar's website, you will find this message:

#### OFFICE OF PROFESSIONAL CONDUCT

"The Office of Professional Conduct is no longer part of the Utah State Bar. Please visit [opcutah.org](http://opcutah.org) for more information about filing information with the OPC, the procedural rules for attorney discipline, public attorney discipline, requesting an OPC attorney speaker at your next CLE event, and all other matters pertaining to the role of the Office of Professional Conduct."

The OPC's website is now found at [www.opcutah.org](http://www.opcutah.org).

### What Has Not Changed

In May 2019, Judge Hagen and I wrote, "Nothing will raise a lawyer's blood pressure like getting a letter from the Office of Professional Conduct stating that you are under investigation for violation of the ethical rules." Hagen and Call, *supra*, at 32. Unfortunately, nothing in the amended rules will change this reality. Although streamlined and clarified in many respects, the disciplinary rules can still seem unfamiliar and daunting. It is nearly impossible for most recipients of such letters to stay objective. The best antidote, of course, is to do your best to understand and follow all ethical rules. In the unfortunate event you do get one of those agonizing letters from the OPC, my advice is to *keep calm, carry on, and get help from someone you trust.*

*Every case is different. This article should not be construed to state enforceable legal standards or to provide guidance for any particular case. The views expressed in this article are solely those of the author.*

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