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Lawyer Discipline Process

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Letter from the Utah Office of Professional Conduct

Dear [insert your name here]:

This is to notify you that the Office of Professional Conduct (OPC) has received information concerning your conduct as a lawyer. A copy of the information is enclosed. We recognize that having our office involved in matters such as this can be inconvenient and unsettling. Although the information received does not constitute a Bar complaint, the OPC has a duty to screen all information coming to its attention that may relate to misconduct of an attorney. We will undertake an investigation of this matter and will either open an OPC informal complaint or decline to prosecute the matter.

Sincerely, Office of Professional Conduct

Inconvenient and unsettling? That's the understatement of the year. Your initial reaction to receiving a letter like this might include going straight to the restroom, losing several nights' sleep, and becoming functionally incapacitated for a time. But then what are you going to do? We will help you understand the process.

The attorney discipline process is governed by the Rules of Lawyer Discipline, Disability, and Sanctions, which are found in Chapter 11, Article 5 of the Utah Code of Judicial Administration. The OPC functions as the prosecutor – it investigates

allegations of misconduct and decides whether to press charges. *See* R. 11-521. The process consists of three phases: preliminary investigation; screening panel proceedings; and district court proceedings.

Preliminary Investigation

First, the OPC receives a complaint from someone regarding attorney misconduct or, in some cases, files a complaint itself. R. 11-530(a). The OPC conducts a preliminary investigation to determine whether the complaint can be resolved informally. Rule 11-530(c)–(e). If the complaint cannot be resolved informally, or if good cause otherwise exists, the OPC serves on the lawyer the complaint and a notice, which identifies with particularity the possible violations of the Rules of Professional Conduct. R. 11-530(e). The lawyer then has twenty-one days to file an answer explaining the facts surrounding the complaint together with all defenses and responses to the claims of possible misconduct. R. 11-530(f). After the answer is filed, or if the lawyer fails to respond, the OPC refers the case to a screening panel comprised of five members of the Ethics and Discipline Committee, who are appointed to their positions directly by the Utah Supreme Court. R. 11-530(f); 11-510; 11-511.

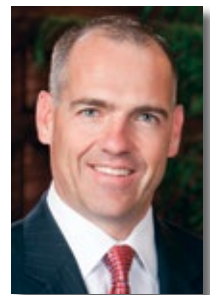
Screening Panel Proceedings

In the second phase, the screening panel considers the merits of the complaint. R. 11-531(a). The lawyer may request that the committee chair authorize service of a subpoena on a third party to produce documents. R. 11-512. Before taking any action that may result in the recommendation of an admonition

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or public reprimand or the OPC's filing of an action in district court, the screening panel must, with at least twenty-eight days' notice, afford the lawyer an opportunity to appear before it for a hearing. R. 11-531(b). The lawyer may submit a written brief, testify, call witnesses, and present oral argument at the hearing. R. 11-531(c)–(d). The lawyer may be represented by counsel and has the right to be present when evidence is presented. R. 11-531(f). The hearing is recorded so that a transcript can be generated. R. 11-531(h). After reviewing the facts developed by the complaint, answer, investigation, and hearing, the screening panel makes one of the following determinations or recommendations: dismissal; referral to the Professionalism and Civility Counseling Board; referral to the committee chair with recommendation for admonishment; referral to the Committee chair with recommendation for public reprimand; or recommendation that the OPC file an action in district court against the lawyer. R. 11-531(i). The screening panel cannot suspend or disbar a lawyer; those penalties can only be imposed by a district court.

There is an intermediate level of review available before the final determination is issued that allows either the OPC or the lawyer to submit written exceptions to the screening panel's recommendations and, in some circumstances, have another hearing. R. 11-532. If the lawyer has complied with all of the requirements to submit an exception, he or she may appeal the final committee determination directly to the Utah Supreme Court. R. 11-535. However, no exceptions are allowed if the

recommendation was for the OPC to file an action in district court. R. 11-532(c).

District Court Proceedings

If the screening panel finds probable cause to believe that there are grounds for public discipline that merit filing an action, the OPC will file an action in district court. R. 11-536. The Utah Rules of Civil Procedure and Evidence apply to the action, affording the lawyer the opportunity to assert defenses and conduct discovery. R. 11-542(a). The burden of proof is on the OPC, and it must prove its case by a preponderance of the evidence. R. 11-542(b)–(c). The case is tried to the bench, and the district court enters findings of fact and conclusions of law. R. 11-536. If the district court finds misconduct, it will hold a hearing to receive evidence relevant to aggravation and mitigation, and then will enter an order sanctioning the lawyer. R. 11-536(e). Either the OPC or the lawyer may appeal the discipline order to the Utah Supreme Court. R. 11-536(f).

With your livelihood and license to practice law potentially on the line, it may be wise to seek professional help in responding to a complaint from the OPC. A wise man once said that a lawyer who represents himself has a fool for a client.

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 authors.