

Office of Professional Conduct Statistics on Complaint Received 2007-2008

The Office of Professional Conduct (“OPC”) collects and categorizes statistics every fiscal year which list the types of complaints received and the sources of those complaints. This information is included in an annual report to the Utah Supreme Court and is provided below to inform and educate lawyers about potential problem areas and to suggest renewed attention to the improvement of practices and conduct, rededication to high ethical standards and renewed commitment to professionalism and client services.

For informal complaints reviewed in fiscal year 2007-2008, in approximate percentages, the cases resulted in violations of the following Rules of Professional Conduct:

<u>Percentage</u>	<u>Rule</u>	
25.0%	1.4	(Communication)
10.1%	1.3	(Diligence)
7.7%	1.16	(Declining or Terminating Representation)
6.9%	8.1	(Bar Admission and Disciplinary Matters)
6.5%	1.5	(Fees)
6.5%	1.15	(Safekeeping Property)
4.4%	8.4(c)	(Misconduct – Deceit, Fraud, Misrepresentation)
3.6%	3.2	(Expediting Litigation)
3.6%	8.4(d)	(Misconduct Prejudicial to the Administration of Justice)
3.6%	5.3	(Responsibilities Regarding Nonlawyer Assistants)
2.4%	8.4(b)	(Misconduct – Criminal Act)
2.0%	1.2	(Scope of Representation and Allocation of Authority Between Client and Lawyer)
2.0%	4.1	(Truthfulness in Statements to Others)
1.6%	1.1	(Competence)
1.6%	3.3	(Candor Toward the Tribunal)
1.6%	3.4	(Fairness to Opposing Party and Counsel)
1.2%	4.4	(Respect for Rights of Third Persons)
1.2%	1.8	(Conflict of Interest: Current Clients: Specific Rules)
1.2%	1.7	(Conflict of Interest: Current Clients)
1.2%	5.5	(Unauthorized Practice of Law; Multijurisdictional Practice of Law)
.08%	5.1	(Responsibilities of Partners, Managers, and Supervisory Lawyers)
.08%	1.6	(Confidentiality of Information)
.04%	3.1	(Meritorious Claims and Contentions)
.04%	3.4	(Fairness of Opposing Party and Counsel)
.04%	7.4	(Communication of Fields of Practice)
.04%	8.2	(Judicial Officials)
.04%	1.9	(Duties to Former Clients)
.04%	3.7	(Lawyer as Witness)
.04%	4.2	(Communication with Persons Represented by Counsel)
.04%	7.1	(Communications Concerning a Lawyer’s Services)

.04%	7.3	(Direct Contact with Prospective Clients)
.04%	7.5	(Firm Names and Letterheads)
.04%	8.4(e)	(Misconduct – Improperly Influencing a Government Agency or Official)

The OPC's impression is that:

- Violations of **Rule 1.1 (Competence)** commonly derive from attorneys missing court appearances;
- Violations of **Rule 1.5 (Fees)** commonly arise from attorneys collecting fees without performing meaningful work;
- Violations of **Rule 1.15 (Safekeeping Property)** often arise from attorneys failing to promptly provide an accounting of how fees were used;
- Violations of **Rule 1.16 (Declining or Terminating Representation)** commonly result from attorneys withholding the client file upon termination of the representation; and
- Violations of **Rule 8.1 (b) (Bar Admission and Disciplinary Matters)** usually are based upon attorneys failing to respond to the OPC's lawful requests for information in the course of disciplinary investigations.

Accordingly, the OPC's CLE presentations often focus on helping practitioners avoid these particular problems.

NOTARIZED AND VERIFIED INFORMAL COMPLAINT RECEIVED AND PRELIMINARY INVESTIGATION
 After receipt of notarized and verified informal complaint, OPC conducts preliminary investigation which usually includes seeking additional facts from the complainant.
 [RLDD 14-510(a)(1),(2),(3)]

NOTICE OF INFORMAL COMPLAINT ("NOIC")
 OPC sends attorney NOIC. Attorney must respond in writing and sign response.
 [RLDD 14-510(a)(4), (5)]
 OPC sends copy of attorney response to complainant and, where necessary conducts additional investigation, which may include seeking additional responses.
 [RLDD 14-510(a)(5); RLDD 14-504(b)(2)]
 If warranted, case referred to Screening Panel of Ethics and Discipline Committee.
 [RLDD 14-510(b)(6)]

SCREENING PANEL HEARING
 Screening Panel reviews informal complaints referred by OPC, including all facts developed by informal complaint, attorney's answer, investigation and hearing, and the OPC's recommendation.
 [RLDD 14-510(b)(1)]

ABEYANCE
 Proceeding may be held in abeyance if allegations contain matters of substantial similarity to allegations of pending criminal or civil litigation
 [RLDD 14-517(g)]

RESIGNATION WITH DISCIPLINE PENDING
 Proposal filed before adjudication on merits. Supreme Court must approve resignation.
 [RLDD 14-521]

DIVERSION
 OPC may resolve case by stipulating with Respondent to a diversion program in lieu of discipline.
 [RLDD 14-533]

DISCIPLINE BY CONSENT
 Proposal filed before adjudication on merits. The Chair of the Ethics & Discipline Committee must approve proposals for:
 • Admonition
 • Public Reprimand
 [RLDD 14-520]

INTERIM SUSPENSION
 Imposed by District Court 'for threat of harm' or upon conviction of crime involving dishonesty. Court may appoint trustee to protect client interests.
 [RLDD 14-518; RLDD 14-519]

DISMISSALS
 Response from attorney not necessarily needed:
 • Failure to state facts that would support finding of misconduct
 • Complaint unintelligible
 • Statute of limitations
 • Allegations more adequately addressed in other forum
 OR
 OPC contacts attorney with NOIC for response prior to dismissal:
 • Allegations do not constitute rule violation
 • Evidence insufficient to establish rule violation by probable cause
 • OPC may caution attorney.
 [RLDD 14-510(a)(6)]
 [RLDD 14-504(a)(3)(A)]

DECLINATIONS TO PROSECUTE
 • Matter should first be addressed in another forum
 • Lack of nexus to attorney's practice of law
 • Attorney had taken immediate action to remedy non-substantial conduct
 [RLDD 14-510(a)(6)]
 [RLDD 14-504(b)(3)(B)]

COMPLAINANT'S RIGHT TO APPEAL DISMISSALS INCLUDING DECLINATIONS TO PROSECUTE
 Complainant has 15 days to appeal. OPC sends Appeal to Chair of Ethics and Discipline Committee, who affirms or returns case for presentation to Screening Panel
 [RLDD 14-510(a)(6)]

UTAH STATE BAR OFFICE OF PROFESSIONAL CONDUCT DISCIPLINARY PROCESS
 RLDD – Rules of Lawyer Discipline and Disability
 SANCTIONS – Standards for Imposing Lawyer Sanctions
 OPC – Office of Professional Conduct
 NOTE: This graphic representation is intended to give the reader, in summary form, an introduction to the flow of the disciplinary process for notarized and verified complaints. Individual cases differ in their details and there are processed accordingly.

PRIVATE ADMONITION, PUBLIC REPRIMAND, DISMISSAL
 Screening Panel may dismiss case (either outright, or with a caution or upon condition) or recommend that Chair issue Private Admonition or Public Reprimand.
 [RLDD 14-510(b)(5)]

APPEAL OF PRIVATE ADMONITION OR PUBLIC REPRIMAND
 Attorney has 10 days to file exception to Screening Panel recommendation of private Admonition or Public Reprimand. OPC submits exception to Chair of Ethics and Discipline Committee. Chair may hold hearing
 [RLDD 14-510(g)]

FORMAL ACTION RECOMMENDED
 Screening Panel directs OPC to file Complaint in District Court. Chair of Ethics and Discipline Committee signs Complaint.
 [RLDD 14-511(a)]

DISTRICT COURT
 Bench trial in two phases: adjudication of merits and sanctions hearing.
 [RLDD 14-511]
 Court may impose discipline (except Resignation with Discipline Pending) or Dismiss Case.
 • Disbarment
 • Suspension
 • Probation
 • Reprimand
 [SANCTIONS RULE 14-603]

STAYED PROCEEDING
 Upon showing of good cause District Court Proceeding may be stayed because of substantive similarity of the material allegations of pending criminal, civil or disciplinary action.
 [RLDD 14-517(d)]

DISCIPLINE BY CONSENT
 Proposal filed before adjudication on merits. District Court must approve proposals for:
 • Disbarment
 • Suspension
 • Probation
 • Reprimand
 [Chair of Ethics and Discipline Committee May approve Public Reprimand]
 [RLDD 14-520]

APPEAL FROM DISTRICT COURT
 To Utah Supreme Court by OPC or attorney.
 [RLDD 14-511(g)]

