

# Ethics Advisory Opinion Committee Rules of Procedure

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## **I. Duties and Authority.**

(a) *Duties.* The Ethics Advisory Opinion Committee (the “Committee”) of the Utah State Bar (the “Bar”) shall:

- (1) Consider and dispose of requests for advisory opinions on the ethical propriety of anticipated professional or personal conduct of Bar members;
- (2) Prepare and issue formal written opinions in appropriate cases;
- (3) Prepare and issue informal letter responses in other cases;

(4) Fully inform the Board of Bar Commissioners (the “Board”) of all opinions that the Committee issues; and

(5) Publish all formal opinions where they will be available to Utah lawyers and the public at large.

(b) *Authority.*

(1) *Interpretive Authority.* Committee opinions shall interpret the Rules of Professional Conduct adopted by the Utah Supreme Court but, except as necessary to the opinion, shall not interpret other law.

(2) *Requests Outside Committee Authority.* The following requests are outside the Committee’s authority:

(i) Requests for approval of past conduct, unless it or similar conduct is likely to recur, or the Board requests a specific opinion;

(ii) Requests for opinions on conduct of specific lawyers that is the subject of formal dispute resolution proceedings, including, but not limited to, Bar disciplinary proceedings and civil, criminal and administrative proceedings, except when requested by a tribunal with jurisdiction over the matter; and

(iii) Requests for legal, rather than ethics opinions.

(3) *Requests Within Committee Authority.* A request that is otherwise within the Committee’s authority may be declined by the Committee in its discretion if:

(i) The request does not involve a significant subject or involves isolated conduct; or

(ii) The request is clearly resolved by applicable Committee opinions, the Rules of Professional Conduct, statutes or case law.

## **II. Membership.**

(a) *Number of Voting Members.* The Committee shall consist of up to 14 voting members. At least one voting member should be a sitting or former judge.

(b) *Qualifications of Voting Members.* Voting members shall be active members of the Bar in good standing. Members shall be willing to perform Committee obligations in a timely way and shall have demonstrated the ability to craft well-reasoned, articulate opinions.

(c) *Term of Appointments.* Appointments shall be for three-year terms running concurrently with the Bar's fiscal year beginning July 1, with approximately one-third of the terms expiring each June 30.

(d) *Manner of Appointments and Selection Panel.* The President of the Bar shall appoint the Committee Chair (the "Chair") and any judicial member. The Ethics Advisory Opinion Committee Selection Panel (the "Selection Panel") shall appoint the other members. The Selection Panel shall consist of the Bar President, the Bar Commissioner who serves as liaison to the Committee, and the Chair.

(e) *Selection Panel Procedure.* The Selection Panel shall proceed as follows:

(1) Prior to the first day of July of every year, the Selection Panel shall solicit applications for members by publishing a notice in the Utah Bar Journal or other approved publication. The notice shall describe the Committee, its duties and the qualifications for its members.

(2) Interested attorneys shall submit written applications outlining their areas of practice and interest in serving on the Committee.

(3) The Selection Panel shall appoint qualified members, with due regard for balance among substantive practice areas, type of practice (small firm, government, etc.), geographical location, experience and other relevant factors.

(f) *Lay Member.* The Selection Panel may appoint a Utah resident who is not an attorney as a non-voting member.

(g) *Office of Professional Conduct Consultant.* An attorney from the Office of Professional Conduct (the "Office of Professional Conduct") may serve as a voting member of the Committee.

(h) *Associate General Counsel for The Bar.* The Bar's Associate General Counsel or other Bar attorney who answers "Ethics Hotline" questions may serve as an ex-officio member of the Committee.

(h) *Default Resignation.* A member who is absent from four consecutive regularly scheduled meetings shall be deemed to have resigned unless, prior to the next regularly scheduled meeting after four consecutive absences, the member serves on the Chair a written statement of commitment to continue as an active member.

(i) *Unfilled Terms.* The Selection Panel shall fill vacancies created by resignation, death, default resignation and otherwise prior to normal termination of an appointment, but without having to follow otherwise required notice procedures.

(j) *Vice-Chair and Secretary.* The Chair may designate members of the Committee as Vice-Chair and Secretary.

### **III. Procedure.**

(a) *Requests for Opinions.*

(1) The Board, any member of the Bar in good standing or other person with a significant interest in obtaining an advisory opinion on legal ethics may request an opinion.

(2) Requests shall be in writing and filed with the Committee, the Board or the Office of Professional Conduct. Requests filed with the Board or the Office of Professional Conduct shall be forwarded to the Committee.

(3) Requests shall include:

(i) A brief description of the facts;

(ii) A concise statement of the issue presented;

(iii) Reference to relevant Rules of Professional Conduct; and

(iv) Citations to relevant ethics opinions, judicial decisions and statutes.

(b) *Disposition of Requests.* The Committee may dispose of a request by issuing, in its discretion:

(1) A formal Ethics Opinion; or

(2) A Letter Response declining the request pursuant to § I(b)(2) or § I(b)(3).

(c) *Committee Procedures.*

(1) The Chair or the Chair's designee shall review the request and make a preliminary determination on whether the request (A) must be declined as outside the scope of the Committee's authority, (B) should be declined in the Committee's discretion, or (C) should be the subject of an opinion.

(2) The Committee shall review the preliminary determination of the Chair or the Chair's designee.

(3) The Committee shall consider whether its analysis and resolution of the issues discussed in the request would materially benefit from the views of potentially affected or interested persons and organizations. The Committee may (A) seek the views of Bar members through appropriate Bar sections and committees or through a "Request for Comment on a Pending Ethics Issue," published in the Utah Bar Journal or posted on the Bar's web site, (B) invite or approve requests for oral or written presentations to the Committee, or (C) consult with the Office of Professional Conduct.

(4) If the request exceeds the authority of the Committee or the Committee determines to decline the request, the Committee shall issue a letter pursuant to § III(b)(2).

(5) If the request is within the Committee's authority and the Committee determines to issue an opinion,

(i) The Chair shall assign the request to one or more Committee members, who shall prepare a draft opinion within the time as the Chair designates.

(ii) The Chair shall circulate the draft opinion to the Committee and place it on the agenda for the next Committee meeting.

(iii) The Committee shall consider the draft opinion.

(iv) Draft opinions may be returned to the opinion drafters for reconsideration in light of the comments of the Committee members.

(v) A draft opinion shall become an Ethics Opinion of the Committee by majority vote of the voting members present at a regularly or specially scheduled meeting of the Committee. If the principal issues of a draft opinion have been discussed in

at least one regularly or specially scheduled Committee meeting, the opinion may be approved by majority vote without a further meeting. The Chair may solicit votes by any appropriate means, including facsimile, e-mail or telephone polling.

(vi) One or more Committee members may issue dissenting or concurring opinions, which shall be included with any main opinion issued by the Committee.

(6) Members should recuse themselves when they may not be able to address an issue impartially.

*(d) Publication Procedures.*

(1) The Committee shall provide prompt notice of its Ethics Opinions, including information about seeking review of opinions by the Board:

(i) To the person who requested the opinion, by mail; and

(ii) To members of the Bar and the public by publishing the opinion or a summary in the Utah Bar Journal. The Committee shall also make available the full text of the opinion for publication on the Bar's web page.

(2) Unless the Committee or the Board orders otherwise, an Ethics Opinion is effective when issued by the Committee.

*(e) Reconsideration and Appeal Procedures.*

*(1) Ethics Opinions.*

(i) Within 30 days after the earlier of receipt of notice of issuance of an Ethics Opinion or the last day of the last calendar month printed on the face of the Utah Bar Journal containing the publication of an Ethics Opinion under § III(d)(1)(ii), a member of the Bar, or any other person upon a showing of good cause, may either (A) file a petition for review with the Board, requesting reversal or modification of the Ethics Opinion and stating the basis in fact, law or policy for the request, or (B) file a request for reconsideration with the Committee.

(ii) A request for reconsideration under § III(e)(1)(i)(B) is optional and is not a required condition for seeking Board review. If this option is selected, however, the provisions of § III(e)(2)(ii) will apply to the request, and the time for submitting a petition for review to the Board is governed by § III(e)(2)(iii).

(iii) Notwithstanding the filing of a request for review of an Ethics Opinion pursuant to this § III(e)(1), the Opinion shall remain in full force and effect for the period during which the review is pending, unless the Board, in its discretion, issues a stay pending the outcome.

(2) *Letter Responses.* Within 30 days of receipt of a Letter Response under § III(b)(2), the recipient may submit to the Committee a written request for reconsideration, stating the basis in fact, law or policy for the request. The recipient may also request oral argument.

(i) *Condition for Board Review.* No person may seek Board review of a Letter Response until a request for reconsideration has been filed with the Committee under this section and has become subject to final disposition by the Committee.

(ii) *Denial by Operation of Time.* If the Committee does not grant a request for reconsideration within 60 days of its filing with the Committee, the request may be deemed denied for purposes of seeking Board review. If the Committee does not issue a written, final disposition within 60 days after granting a request for reconsideration, the request may be deemed denied for purposes of seeking Board review. The Chair of the Committee may extend either, but not both, 60-day period in this section by up to 30 days by written notification to the party requesting reconsideration.

(iii) *Review by the Board.* Within 30 days after (A) receipt of notice of the Committee's final disposition of a request for reconsideration of a Letter Response or (B) the operation of § III(e)(2)(ii), a recipient of a Letter Response may file with the Board a petition for review, requesting reversal or modification of the Letter Response and stating the basis in fact, law or policy for the request.

#### **IV. Meetings.**

(a) *Schedule.* The Committee shall hold scheduled meetings every month except July and at such other times as the Chair may designate.

(b) *Location.* The Committee may meet at the Utah Law and Justice Center or such other places as the Chair may designate.

(c) *Quorum.* To conduct official business at a Committee meeting, more than 50% of the voting members must be present, either in person or by telephone or audio-visual conference call.

(d) *Minutes*. The Secretary or other member of the Committee designated by the Chair shall prepare and the Committee shall approve minutes of Committee meetings.

## **V. Opinions.**

(a) *All Opinions Formal*. All Committee opinions shall be formal opinions. The Committee shall not issue informal opinions.

(b) *Effect*. A lawyer who acts in accordance with an ethics advisory opinion enjoys a rebuttable presumption of having abided by the Utah Rules of Professional Conduct.

(c) *Publication*. Ethics advisory opinions shall be published as soon as practicable as specified in § III(d)(1)(ii). The Chair or the Chair's designee shall also make reasonable efforts to obtain publication of opinions in appropriate compilations.

## **VI. Confidentiality.**

The identity of persons or entities involved in a request for an opinion shall not be disclosed in the opinion without their consent. Committee members may not disclose the particulars of pending issues or circulate draft opinions to persons outside the Committee; provided, however, that: (a) members may be assisted by their partners, colleagues, employees, associates or law student volunteers in researching and drafting opinions; (b) members may discuss general principles of law and ethics as they relate to a pending issue with non Committee members; and (c) an attorney from the Office of Professional Conduct serving as a non-voting consultant to the Committee may circulate draft opinions to members of the Office of Professional Conduct. Those assisting a Committee member and members of the Office of Professional Conduct must also observe the confidentiality requirements of this section.