

Utah Supreme Court Standing Order No. 7

(As to establishment of a program of professionalism counseling for members of the Utah State Bar)

Effective April 1, 2008; Amended June 12, 2012

The Court intends to establish a board (hereinafter the "Board") consisting of seven counselors to counsel and educate members of the Bar concerning the Court's Standards of Professionalism and Civility (hereinafter the "Standards"). Specifically, the Board's purposes are: (1) to 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) to provide counseling to members of the Bar who request advice on their own obligations under the Standards; (3) to provide CLE on the Standards; (4) to publish advice and information relating to the work of the Board.

Board Composition

Appointees shall serve on a volunteer basis and will be appointed based upon stature in the legal community and experience in legal professionalism matters. A minimum of one of the seven appointees shall have transactional experience, and at least one attorney 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 Court will appoint one of the Board members as chair.

Submission of Complaints and Questions to the Board

The Board is authorized to consider complaints by lawyers concerning the professionalism of other lawyers, referrals from judges or OPC counsel, and questions about professionalism 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.

If a lawyer wishes to lodge a complaint with the Board concerning the conduct of another member of the Bar, the complaint must be in writing (i.e., by letter or email) and signed by the complainant. The Board shall not consider anonymous complaints about lawyers. 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. Referrals from OPC counsel should be in writing.

Procedure

The Board is authorized to develop its own procedures based upon this Standing Order, 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.

Confidentiality

Except as authorized in this Standing Order or in Rule 14-515(a)(4) of the Supreme Court Rules Governing the Utah State Bar, the contents of statements, communications or opinions made by any participant in the program 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 lawyer who is subject to a complaint or referral 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.

Resolution and Written Advisories

Resolution may be by written advisory to the lawyers involved, by a face-to-face meeting with the lawyers, or through counsel provided by telephone or other means. Should it determine to resolve the matter through a written advisory, reference should be made to individual Standards. A copy of each written advisory (including identifying information) shall be provided to the lawyers involved in the matter and may, at the discretion of the Board, also be provided 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. Also, the panel 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 web page.

The Duty of Good Faith

Attorneys 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.

Publication

The Board shall report annually to the Court concerning its operation, the Standards it has interpreted, the advice it has given, and any trends it believes important for the Court to know about. It should also make suggestions to the 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. Also, the Board shall maintain a web page under the auspices of the Court or the Bar that provides a database of the advisories transmitted to the Utah Bar Journal for Publication.

Complaints should be sent to James Ishida, Appellate Court Administrator, Utah Supreme Court, P.O. Box 140210, Salt Lake City, UT 84114-0210; email address jamesi@utcourts.gov