

Rules Governing the Ethics Advisory Opinion Committee

I. Enabling Authority.

The Ethics Advisory Opinion Committee (“the Committee”) shall be a standing committee of the Utah State Bar (“the Bar”). The Committee is the body designated by the Board of Bar Commissioners of the Utah State Bar (“the Board”) to consider requests for advisory opinions concerning the ethical propriety of professional or personal conduct of Bar members and to issue and publish formal written opinions in appropriate cases. Its duties, authority and procedures are specifically set forth in the Rules of Procedure of the Ethics Advisory Opinion Committee (“the Rules”), as approved and amended from time to time by the Board.

II. General Responsibility.

Pursuant to its Rules, the Committee shall receive and respond to requests for ethics advisory opinions concerning Utah lawyers’ ethical behavior under the Rules of Professional Conduct adopted by the Utah Supreme Court.

III. Ethics Opinions and Letter Responses.

The Committee shall respond to all requests for ethics advisory opinions either by issuing a formal Ethics Opinion to be published and applicable to all affected members of the Bar, or by issuing a Letter Response to the requesting party, as the Committee deems appropriate. The Committee will not issue “informal opinions,” but may respond to a request for an ethics advisory opinion by Letter Response if, in Committee’s judgment, the request does not warrant the issuance of a formal Ethics Opinion.

IV. Relation to Office of Professional Conduct.

The Committee shall be independent from the Office of Professional Conduct of the Utah State Bar. However, the Committee’s Rules shall provide that the Committee shall include one lawyer designated by that Office to sit as a non-voting member of the Committee and serve as consultant to the Committee.

V. Effect of Ethics Opinions.

The Office of Professional Conduct shall not prosecute a Utah lawyer for conduct that is in compliance with an ethics advisory opinion that has not been withdrawn at the time of the conduct in question. No court is bound by an ethics opinion's interpretation of the Utah Rules of Professional Conduct.

VI. Reconsideration and Review Procedures.

(a) Petition for Review. Ethics Opinions and Letter Responses issued by the Committee are subject to review by the Board pursuant to the procedures set forth in this Article VI.

(i) Ethics Opinions. Within the times specified in § VI(b), any member of the Bar in good standing, or any other person upon a showing of good cause, may petition the Board for review of an Ethics Opinion issued by the Committee by filing a written request for reversal or modification of the Ethics Opinion or for other relief, stating the bases in fact, law or policy for the request. A petition for review under this provision need not be preceded by a request for reconsideration to the Committee. However, a reconsideration request is optional under the Committee's Rules and does not preclude or prejudice a subsequent, timely-filed petition for review to the Board.

(ii) Letter Responses. A recipient of a Letter Response may petition the Board for review of the Letter Response only by first filing a request for reconsideration of the letter by the Committee under the Committee's Rules. Upon final disposition of the request for reconsideration by the Committee, the person may seek review of the Committee's action by filing with the Board a petition for review, stating the bases in fact, law or policy for the request and the requested relief.

(b) Time for Review.

(i) Ethics Opinions. Any person who seeks Board review of an Ethics Opinion must file a petition for review within 30 days after the earlier of (1) the person's receipt of service of the Ethics Opinion or the Committee's final disposition of a request for reconsideration, as applicable, or (2) the last day of the last calendar month printed on the face of the Utah Bar Journal containing notice of the Ethics Opinion.

(ii) Letter Responses. A recipient of a Letter Response who seeks Board review of a Letter Response under § VI(a)(ii) must file a petition for review within 30 days after the Committee's issuance of a final response to a request for reconsideration or upon the denial of the request for reconsideration by the expiration of time as specified in the Committee's Rules.

(c) Notice of Petition for Review. Any person filing a petition for review of an Ethics Opinion or a Letter Response with the Board shall serve a copy of the petition on the Chair of the Committee.

(d) Effect Pending Appeal. Notwithstanding the filing of a petition for review of an Ethics Opinion pursuant to these provisions, the Ethics Opinion shall remain in full force and effect for the period during which the review is pending, unless the Board, upon motion or sua sponte, issues a stay pending appeal.

(e) Procedure by Board Upon Receipt of Timely Petition for Review. Upon receipt of a timely petition for review of an Ethics Opinion or Letter Response, the Board, or a subcommittee of the Board specifically designated for such task, shall review the petition. The Board or subcommittee may affirm, overrule or remand the Opinion or Letter Response to the Ethics Advisory Committee, after conducting such procedures as it deems appropriate, which may, but need not, include a stay of enforcement of the Opinion, requests for comment from members of the Bar, amicus briefs, hearings, or any other such proceedings as the Board in its discretion deems appropriate.

(f) Out-of-Time Review. A Utah lawyer in good standing who does not meet the time requirements of § VI(b)(i) may at any time file with the Board a petition for review of an Ethics Opinion that otherwise meets the requirements of § VI(a)(i). The Board will refer any petition for review filed under this section to the Committee for initial consideration and recommendation. Upon receipt of the recommendation of the Committee, the Board will take such action on the petition for review as it deems appropriate.

VII. Publication and Reports to the Board

(a) Publication. The Committee shall publish all Ethics Opinions by submitting official copies to (i) the Executive Director of the Bar and (ii) a person designated by the Executive Director, who will include the full text of the Opinions on the Bar's Internet website and provide a timely, prominent notice on the Bar's "home page" of the issuance of new opinions. The Committee shall also take

reasonable steps to make the opinions available to other commercial and non-profit publishers of legal information.

(b) Quarterly Summaries. No less frequently than quarterly, the Chair of the Committee or the Chair's designee shall give the Board a summary of the Ethics Opinions issued by the Committee since the last such report and any significant Letter Responses recently issued by the Committee or other notable Committee activity .

(c) Annual Report. The Chair of the Committee shall submit a written annual report to the Board by March 1 of each year, summarizing the actions taken by the Committee in the previous calendar year. The report should include information concerning the number of requests for opinions submitted to the Committee, the number of opinions issued, the general issues addressed in the opinions, and a summary of other matters such as Letter Responses processed by the Committee.

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The foregoing Rules Governing the Ethics Advisory Opinion Committee of the Utah State Bar and review of that Committee's actions by the Board of Bar Commissioners were adopted by resolution of the Board at its meeting of January 26, 2001 and amended April 27, 2007.