

1 **Rule 3-201. Court Commissioners.**

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3 **Intent:**

4 To define the role of court commissioner.

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6 To establish a term of office for court commissioners.

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8 To establish uniform administrative policies governing the qualifications, appointment,
9 supervision, discipline and removal of court commissioners.

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11 To establish uniform administrative policies governing the salaries, benefits and privileges of the
12 office of court commissioner.

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14 **Applicability:**

15 This rule shall apply to all trial courts of record.

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17 **Statement of the Rule:**

18 (1) **Definition.** Court commissioners are quasi-judicial officers established by the Utah Code.

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20 (2) **Qualifications.**

21 (2)(A) Court commissioners must be at least 25 years of age, United States citizens,
22 Utah residents for three years preceding appointment and residents of Utah while
23 serving as commissioners. A court commissioner shall reside in a judicial district the
24 commissioner serves.

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26 (2)(B) Court commissioners must be admitted to practice law in Utah and exhibit good
27 character. Court commissioners must possess ability and experience in the areas of law
28 in which the court commissioner serves.

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30 (2)(C) Court commissioners shall serve full time and shall comply with Utah Code
31 Section 78A-2-221.

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33 (3) **Appointment- Oath of office.**

34 (3)(A) Selection of court commissioners shall be based solely upon consideration of
35 fitness for office.

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37 (3)(B) When a vacancy occurs or is about to occur in the office of a court commissioner,
38 the Council shall determine whether to fill the vacancy. The Council may determine that
39 the court commissioner will serve more than one judicial district.

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41 (3)(C) A-After the determination required by paragraph (3)(B), the presiding judge(s) of
42 the district(s) the commissioner will serve, will form a committee for the purpose of

43 nominating candidates. ~~The committee will for the position of court commissioner shall~~
44 consist of the presiding judge(s) or designee(s) from each court level and judicial district
45 that the commissioner will serve, three lawyers, and two members of the public.
46 Committee members shall be appointed by the presiding judge(s) of the district court of
47 each judicial district. ~~The committee members shall serve three year terms, staggered so~~
48 ~~that not more than one term of a member of the bench, bar, or public expires during the~~
49 ~~same calendar year.~~ The presiding judge(s) or judges shall designate a chair of the
50 committee. All members of the committee shall reside in the judicial district(s). All
51 members of the committee shall be voting members. A quorum of one-half the
52 committee members is necessary for the committee to act. The committee shall act by
53 the concurrence of a majority of the members voting. When voting upon the
54 qualifications of a candidate, the committee shall follow the procedures established in
55 the commissioner nominating manual.

56
57 ~~(3)(D) If the commissioner will serve more than one judicial district, the presiding judges~~
58 ~~of the districts involved shall select representatives from each district's nominating~~
59 ~~committee to form a joint nominating committee with a size and composition equivalent~~
60 ~~to that of a district committee, except that a maximum of two judges from each district~~
61 ~~shall serve on the joint nominating committee.~~

62 (3)(DE) No member of the committee may vote upon the qualifications of any candidate
63 who is the spouse of that committee member or is related to that committee member
64 within the third degree of relationship. No member of the committee may vote upon the
65 qualifications of a candidate who is associated with that committee member in the
66 practice of law. The committee member shall declare to the committee any other
67 potential conflict of interest between that member and any candidate as soon as the
68 member becomes aware of the potential conflict of interest. The committee shall
69 determine whether the potential conflict of interest will preclude the member from voting
70 upon the qualifications of any candidate. The committee shall record all declarations of
71 potential conflicts of interest and the decision of the committee upon the issue.

72 (3)(EF) The administrative office of the courts shall advertise for qualified applicants and
73 shall remove from consideration those applicants who do not meet minimum
74 qualifications of age, citizenship, residency, and admission to the practice of law. The
75 administrative office of the courts shall develop uniform guidelines for the application
76 process for court commissioners.

77 (3)(EG) The nominating committee shall review the applications of qualified applicants
78 and may investigate the qualifications of applicants to its satisfaction. The committee
79 shall interview selected applicants and select the three best qualified candidates. All
80 voting shall be by confidential ballot. The committee shall receive public comment on
81 those candidates as provided in paragraph (4). Any candidate may be reconsidered
82 upon motion by a committee member and upon agreement by a majority of nominating
83 committee members.

84 (3)(GH) When the public comment period as provided in paragraph (4) has closed, the
85 comments shall be given to the nominating committee. If any comments would

86 negatively affect the committee's decision on whether to recommend a candidate, the
87 candidate shall be given all comments with the commenters' names redacted and an
88 opportunity to respond to the comments. If the committee decides not to recommend a
89 candidate based on the comments, the committee shall select another candidate from
90 the interviewed applicants and again receive public comment on the candidates as
91 provided in paragraph (4).

| 92 (3)(~~H~~) The chair of the nominating committee shall present the names, applications, and
93 the results of background investigations of the nominees to the judges of the courts the
94 court commissioner will serve. The committee may indicate its order of preference.

| 95 (3)(~~J~~) The judges of each court level the court commissioner will serve shall together
96 select one of the nominees by a concurrence of a majority of judges voting. If the
97 commissioner will serve more than one judicial district, the concurrence of a majority of
98 judges in each district is necessary for selection.

| 99 (3)(~~J~~) The presiding judge of the district the court commissioner will primarily serve
100 shall present the name of the selected candidate to the Council. The selection shall be
101 final upon the concurrence of two-thirds of the members of the Council. The Council
102 shall vote upon the selection within 45 days of the selection or the concurrence of the
103 Council shall be deemed granted.

| 104 (3)(~~K~~) If the Council does not concur in the selection, the judges of the district may
105 select another of the nominees or a new nominating process will be commenced.

| 106 (3)(~~L~~) The appointment shall be effective upon the court commissioner taking and
107 subscribing to the oath of office required by the Utah Constitution and taking any other
108 steps necessary to qualify for office. The court commissioner shall qualify for office
109 within 45 days after the concurrence by the Council.

110 **(4) Public comment for appointment and retention.**

111 (4)(A) Final candidates for appointment and court commissioners who are up for
112 retention shall be subject to public comment.

113 (4)(B) For final candidates, the nominating committee shall be responsible for
114 giving notice of the public comment period.

115 (4)(C) For court commissioners, the district in which the commissioner serves
116 shall be responsible for giving notice of the public comment period.

117 (4)(D) The nominating committee or district in which the commissioner serves
118 shall:

119 (4)(D)(i) email notice to each active member of the Utah State Bar
120 including the names of the nominees or court commissioner with
121 instructions on how to submit comments;

122 (4)(D)(ii) issue a press release and other public notices listing the names
123 of the nominees or court commissioner with instructions on how to submit
124 comments; and

125 (4)(D)(iii) allow at least 10 days for public comment.

126 (4)(E) Individuals who comment on the nominees or commissioners should be
127 encouraged, but not required, to provide their names and contact information.

128 (4)(F) The comments are classified as protected court records and shall not be
129 made available to the public.

130 (5) **Term of office.** The court commissioner shall be appointed until December 31 of the
131 third year following concurrence by the Council. At the conclusion of the first term of
132 office and each subsequent term, the court commissioner shall be retained for a term of
133 four years unless the judges of the courts the commissioner serves vote not to retain the
134 commissioner in accordance with paragraph (8)(B) or unless the Judicial Council does
135 not certify the commissioner for retention under rule 3-111. The term of office of court
136 commissioners holding office on April 1, 2011 shall end December 31 of the year in
137 which their term would have ended under the former rule.

138 (6) **Court commissioner performance review.**

139 (6)(A) **Performance evaluations and performance plans.** The presiding judge
140 of each district and court level the commissioner serves shall prepare an
141 evaluation of the commissioner's performance and a performance plan in
142 accordance with Rule 3-111. Court commissioners shall comply with the program
143 for judicial performance evaluation, including expectations set forth in a
144 performance plan.

145 (6)(B) **Public comment period results.** When the public comment period for a
146 commissioner provided in paragraph (4) closes, the comments shall be given to
147 and reviewed by the presiding judge of each district and court level the
148 commissioner serves. If there are any negative comments, the negative
149 comments shall be provided to the commissioner with the commenters' names
150 redacted and the commissioner shall be given an opportunity to respond to the
151 comments.

152 (7) **Corrective action or removal during a commissioner's term.**

153 (7)(A) **Corrective action.**

154 (7)(A)(i) The Council may take corrective actions as the result of a
155 complaint filed under rule 3-201.02.

156 (7)(A)(ii) If the commissioner's performance is not satisfactory, corrective
157 actions may be taken in accordance with paragraph (7)(A)(iii) by the
158 presiding judge, or presiding judges if the commissioner serves multiple
159 districts or court levels, with the concurrence of a majority of the judges in
160 either district or court level the commissioner serves.

161 (7)(A)(iii) Corrective actions may include but are not limited to private or
162 public censure, restrictions in case assignments with corresponding
163 reduction in salary, mandatory remedial education, suspension without
164 pay for a period not to exceed 60 days, and removal under (7)(B)(i)(c).

165 (7)(B) **Removal.**

166 (7)(B)(i) **Removal by Judicial Council.** During a commissioner's term,
167 the court commissioner may be removed by the Council:

168 (7)(B)(i)(a) as part of a reduction in force;

169 (7)(B)(i)(b) for failure to meet the evaluation requirements; or

170 (7)(B)(i)(c) as the result of a complaint filed under rule 3-201.02
171 upon the concurrence of two-thirds of the Council.

172 (7)(B)(ii) **Removal by District or Court Level.**

173 (7)(B)(ii)(a) During a commissioner's term, if the commissioner's
174 performance is not satisfactory, the commissioner may be
175 removed by the presiding judge, or presiding judges if the
176 commissioner serves multiple districts or court levels, only with the
177 concurrence of a majority of the judges in each district or court
178 level the commissioner serves.

179 (7)(B)(ii)(b) If the commissioner serves multiple districts or court
180 levels and one district or court level contests a commissioner
181 removal decision made by the other district or court level, the
182 Management Committee will review the decision, with final
183 determination by the Judicial Council.

184 (7)(C) **Review of District or Court Level Decisions.** If the commissioner
185 disagrees with a district or court level's decision to remove the commissioner or
186 take corrective actions, the commissioner may request a review of the decision
187 by the Management Committee of the Council.

188 (8) **Retention.**

189 (8)(A) The Council shall review materials on the commissioner's performance
190 prior to the end of the commissioner's term of office and the Council shall vote on
191 whether the commissioner is eligible to be retained for another term in
192 accordance with rule 3-111.

193 (8)(B) At the end of a commissioner's term, the judges of each district and court
194 level the commissioner serves may vote not to retain the commissioner for
195 another term of office. The decision not to retain is without cause and shall be by
196 the concurrence of a majority of the judges in each district and court level the
197 commissioner serves. A decision not to retain a commissioner under this

198 paragraph shall be communicated to the commissioner within a reasonable time
199 after the decision is made, and not less than 60 days prior to the end of the
200 commissioner's term.

201 **(9) Salaries and benefits.**

202 (9)(A) The Council shall annually establish the salary of court commissioners. In
203 determining the salary of the court commissioners, the Council shall consider the
204 effect of any salary increase for judges authorized by the Legislature and other
205 relevant factors. Except as provided in paragraph (6), the salary of a
206 commissioner shall not be reduced during the commissioner's tenure.

207 (9)(B) Court commissioners shall receive annual leave of 20 days per calendar
208 year and the same sick leave benefits as judges of the courts of record. Annual
209 leave not used at the end of the calendar year shall not accrue to the following
210 year. A commissioner hired part way through the year shall receive annual leave
211 on a prorated basis. Court commissioners shall receive the same retirement
212 benefits as non-judicial officers employed in the judicial branch.

213 **(10) Support services.**

214 (10)(A) Court commissioners shall be provided with support personnel,
215 equipment, and supplies necessary to carry out the duties of the office as
216 determined by the presiding judge.

217 (10)(B) Court commissioners are responsible for requesting necessary support
218 services from the presiding judge.

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220 *Effective: May 1, 202~~4~~1*