

1 **Rule 11-401. Standing Committee on Appellate Representation and the Appellate**  
2 **Roster**

3 **Intent:**

4 To establish a standing committee to assist the Board of Appellate Court Judges in  
5 determining a roster of indigent service provider attorneys who are eligible for  
6 appointment to represent indigent individuals on appeal to the Utah Supreme Court  
7 and the Utah Court of Appeals.

8 To establish uniform terms and a method for appointing committee members.

9 To establish a schedule for recommending the appointment of indigent defense service  
10 provider attorneys to, or the removal of indigent defense service provider attorneys  
11 from, the Appellate Roster.

12 **Definitions:**

13 The terms “indigent defense service provider,” “indigent individual,” “indigent defense  
14 services,” and “Indigent Appellate Defense Division” are defined in Utah Code Sections  
15 78B-22-102 and -802. For purposes of this rule:

16 (1) “indigent appellate defense service provider entity” means a legal defender office  
17 that is under contract to perform indigent defense services for one or more counties in  
18 the state and has a designated appellate division consisting of one or more attorneys  
19 who are employed by the legal defender office and whose primary focus is appellate  
20 representation. “Employed by” does not include an attorney who contracts separately  
21 with an indigent appellate defense service provider entity;

22 (2) “indigent defense service provider attorney” means an individual attorney who has  
23 been appointed to the Appellate Roster; and

24 (3) “Appellate Roster” means the list of indigent service provider attorneys who are  
25 eligible for appointment to represent indigent individuals on appeal to the Utah  
26 Supreme Court and the Utah Court of Appeals.

27 **Applicability:**

28 This rule applies to the internal operation of the Board of Appellate Court Judges and  
29 the Committee on Appellate Representation and to courts of record in cases involving  
30 indigent individuals.

31 **Statement of the Rule:**

32 **(a) Committee establishment.** The Standing Committee on Appellate Representation is  
33 established as a committee of the Board of Appellate Court Judges.

34 **(1) Composition.** The Committee consists of at least:

35 (A) One attorney from the Criminal Appeals Division of the Utah  
36 Attorney General's Office;

37 (B) One attorney from an indigent defense service provider representing  
38 criminal defendants in counties of the first or second class;

39 (C) The Chief Appellate Officer or designee of the Indigent Appellate  
40 Defense Division;

41 (D) One attorney on the Appellate Roster for criminal appeals;

42 (E) One attorney on the Appellate Roster for juvenile delinquency appeals;

43 (F) One attorney on the Appellate Roster for child welfare appeals;

44 (G) One active or retired judge from an appellate court;

45 (H) One active or retired judge from another court of record.

46 **(2) Appointment.** Committee members are appointed by the Supreme Court and  
47 serve staggered four-year terms. The Supreme Court selects a chair from among  
48 the Committee's members. Judges who serve as members of the Committee will  
49 generally not be selected as chair. Committee members serve as officers of the  
50 court and not as representatives of any client, employer, or other organization or  
51 interest group. At the Committee's first meeting in any calendar year, and at

52 every meeting at which a new Committee member first attends, each Committee  
53 member will briefly disclose the general nature of the member's legal practice.

54 **(3) Vacancies.** In the event of a Committee vacancy, the Supreme Court, after  
55 consulting with the Committee chair, will appoint a new Committee member  
56 from the same category as the prior Committee member to serve for the  
57 remaining unexpired term.

58 **(4) Absences.** If a Committee member fails to attend two consecutive Committee  
59 meetings, the chair may notify the Supreme Court of those absences and may  
60 request that the Supreme Court replace that Committee member.

61 **(5) Administrative assistance.** The Administrative Office of the Courts will  
62 coordinate staff support to the Committee, including the Office of General  
63 Counsel's assistance in research and drafting.

64 **(b) Appellate Roster.** The Board of Appellate Judges maintains an appellate roster of  
65 indigent service provider attorneys skilled in handling criminal, juvenile delinquency,  
66 and child welfare proceedings as defined in Rule 1(f) of the Utah Rules of Appellate  
67 Procedure, and termination of parental rights proceedings under Section 78B-6-112.

68 **(1) Purpose of the Committee.** The Committee's purpose is to recommend to the  
69 Board of Appellate Court Judges attorneys for inclusion on an appellate roster of  
70 indigent defense service provider attorneys eligible for appointment by the  
71 courts of this state to represent indigent individuals on appeal before the Utah  
72 Supreme Court or the Utah Court of Appeals. Except as specified in paragraph  
73 (b)(9), only attorneys on the Appellate Roster are eligible for such court  
74 appointments.

75 **(2) Committee recommendations.** The Committee will consider and recommend  
76 attorneys for inclusion on the Appellate Roster based on the eligibility criteria  
77 listed in paragraph (b)(3), together with any other factor bearing on an  
78 applicant's ethics, diligence, competency, abilities in briefing and oral advocacy,

79 and willingness to fairly, efficiently, and effectively provide appellate  
80 representation to indigent individuals on appeal. The Committee will consider  
81 issues such as quality of briefing, the applicant's frequency of inadequate  
82 briefing, summary dismissals, or involuntary dismissals, and the applicant's  
83 professionalism and civility. The Committee may also recommend removing an  
84 attorney from the Appellate Roster.

85 **(3) Eligibility criteria.** To be considered for the Appellate Roster, an applicant  
86 must at a minimum complete an application in a form provided by the  
87 Committee and:

88 (A) demonstrate that the applicant has briefed the merits in at least three  
89 appeals within the past three years or in 12 appeals total, or is directly  
90 supervised by an attorney with that experience;

91 (B) be a member of the Utah Bar in good standing;

92 (C) demonstrate knowledge of appellate practice as shown by experience,  
93 training, or legal education;

94 (D) demonstrate ability to adequately and effectively raise and argue  
95 issues on appeal and comply with applicable court rules;

96 (E) certify that the attorney has not, within the past three years, been the  
97 subject of an order issued by any appellate court imposing sanctions  
98 against counsel, discharging counsel, or taking other equivalent action  
99 against counsel because of counsel's substandard performance before an  
100 appellate court;

101 (F) must not have been removed from the Appellate Roster within the past  
102 year;

103 (G) submit at least two appellate briefs, at least one of which is in the  
104 relevant subject matter area, to the Committee with a certification that the  
105 applicant was primarily responsible for drafting the briefs;

106 (H) submit a petition under Rule 55 of the Utah Rules of Appellate  
107 Procedure if the person is applying to be on the Appellate Roster for  
108 appeals from child welfare proceedings;

109 (I) provide citations for all appellate decisions in which the applicant was  
110 counsel of record; ~~and~~

111 (I) list and explain the reasons for all cases in which the applicant was  
112 counsel of record that required excessive extensions, defined here as ten or  
113 more extensions in criminal cases, and two or more extensions in juvenile  
114 delinquency, child welfare, or termination of parental rights cases; and

115 (K) certify that the applicant has sufficient time and administrative  
116 support to accept an appointment to provide indigent defense services for  
117 indigent individuals on appeal and to provide the effective assistance of  
118 counsel in every case and a willingness to commit those resources to that  
119 representation.

120 **(4) Roster Selection.** The Board of Appellate Court Judges will approve or  
121 disapprove the Committee's recommendations with respect to attorneys to be  
122 included on the Appellate Roster. Except as provided in paragraph (b)(7), the  
123 Board may not add to the roster an attorney who is not recommended by the  
124 Committee.

125 **(5) Mentoring.** If an attorney is selected for the Appellate Roster on the condition  
126 that the attorney have a mentor, then the attorney must select a mentor who  
127 meets the qualifications set forth in paragraphs (b)(3)(A)-(F). A mentor must  
128 have briefed the merits in at least three appeals within the past three years or in  
129 12 appeals total. The attorney subject to the mentoring requirement must certify  
130 in each brief filed on behalf of an indigent individual that the attorney was  
131 directly supervised in drafting the brief by a mentor qualified under paragraphs

132 (b)(3)(A)-(F). The attorney is not required to name the mentor in their  
133 certification.

134 **(6) Removal.** The Board may at any time remove an attorney from the Appellate  
135 Roster based on the attorney's qualifications, skills, experience, or prior  
136 performance in any appellate court, or the attorney's failure to maintain  
137 eligibility under paragraph (b)(8).

138 **(7) Reconsideration of removal or non-reappointment.** An attorney who is  
139 removed from the Appellate Roster before the end of the attorney's five-year  
140 appointment or who is not reappointed to a subsequent term may petition for  
141 reconsideration by submitting a letter to the Standing Committee on Appellate  
142 Representation. The letter must be submitted within 28 days from the date of the  
143 notice informing the attorney of the removal or non-reappointment. The  
144 Committee will review all materials relevant to the attorney's petition and  
145 recommend to the Board of Appellate Court Judges whether the attorney's  
146 removal or non-reappointment should be upheld. The Board of Appellate Court  
147 Judges will approve or disapprove the Committee's recommendations.

148 **(8) Appointment term, CLE requirement, and reapplication.**

149 (A) An attorney's Appellate Roster appointment ~~term~~ is no more than five  
150 years, depending on when in the year the attorney is appointed to the  
151 roster.

152 (B) During an attorney's Appellate Roster term, the attorney must  
153 complete at least 12 hours of continuing legal education on topics directly  
154 relevant to the attorney's Appellate Roster work. The attorney must certify  
155 completion of the hours at the time of reapplication and provide  
156 documentation of the hours and topics completed.

157 (C) To maintain eligibility for appointment to provide indigent defense  
158 services on appeal, an attorney must reapply under the provisions of

159 paragraph (b)(3) by September 1 of the attorney's fifth year on the  
160 Appellate Roster. The attorney must be recommended by the Committee  
161 and reappointed to the Appellate Roster by the Board of Appellate Court  
162 Judges at the conclusion of the attorney's appointment term.

163 (D) For attorneys appointed after November 1, 2024, all terms will  
164 terminate on December 31 of the attorney's fifth year regardless of  
165 whether a full five years have been served.

166 (E) For attorneys appointed after November 1, 2024, applications and  
167 reapplications are due before July 31 of the attorney's final year on the  
168 roster.

169 **(9) Exemption.** Attorneys employed by an indigent appellate defense service  
170 provider entity or the Indigent Appellate Defense Division to provide indigent  
171 defense services on appeal are exempt from the requirement to be included on  
172 the Appellate Roster. This exemption does not apply to an attorney or an entity  
173 that has contracted with an indigent defense service provider to provide indigent  
174 defense services on appeal.

175 **(A) Requirements for entity exempt status.** In order to qualify for exempt  
176 status, an indigent appellate defense service provider entity or the  
177 Indigent Appellate Defense Division must certify in writing every five  
178 years to the Appellate Representation Committee that the entity has:

179 (i) an appellate division whose primary focus is appellate  
180 representation;

181 (ii) a case management tracking system;

182 (iii) adequate administrative support;

183 (iv) one or more supervising attorneys who are on the appellate  
184 roster; and

185 (v) oversight and supervision of attorneys who handle appellate  
186 cases.

187 (B) Inclusion in an entity's exemption. To be included in an entity's  
188 exemption, an attorney must be employed by the indigent appellate  
189 defense service provider entity. Independent contractors do not qualify  
190 under an indigent appellate defense service provider entity's exemption.

191 **(c) Annual schedule.** The Committee must meet at least annually and must submit its  
192 annual recommendations to the Board of Appellate Court Judges by ~~December 31~~  
193 [October 31](#). If the Committee determines that additional recommendations should be  
194 submitted to the Board of Appellate Court Judges, the Committee may call for  
195 additional applications at any time. The Board of Appellate Court Judges will at its next  
196 meeting thereafter approve or disapprove the Committee's recommendations of  
197 attorneys to be included on the Appellate Roster.

198 **(d) Contracts in effect before this rule's adoption.** An attorney who, before this rule's  
199 adoption, contracted with a government entity to represent indigent individuals on  
200 appeal is subject to the provisions of Rule 38B of the Utah Rules of Appellate Procedure.  
201 Upon the contract's termination, expiration, or renewal, the attorney is subject to this  
202 rule.