

AGENDA

Standing Committee on Appellate Representation

August 1, 2018

12:00p.m. to 2:00 p.m.

Scott M Matheson Courthouse

Judicial Council Room

1. **Welcome and Approval of Minutes** **TAB A**
(Judge Laura Jones)

2. **Report from Application Work Group** **TAB B**
(Ann Marie Taliaferro)

3. **Report from Rules and Statute Work Group**
(Alan Mouritsen)

4. **Other Business**

Tab A

MINUTES
Standing Committee on Appellate Representation
June 27, 2018

MEMBERS PRESENT

Judge Linda Jones, Chair

Margaret Lindsay, Asst. Director Juvenile Appeals Div. Utah Co. Public Defender Assoc.

Monica Maio, Utah Juvenile Defender Attorneys

Alan Mouritsen, Parsons Behle & Latimer, Civil Appellate Practice

Debra Nelson, Appellate Attorney, Salt Lake Legal Defender Association

John Nielsen, Criminal Appeals Division of Utah Attorneys General Office

Nancy Sylvester, Office of General Counsel of Administrative Office of Courts

Ann Marie Taliaferro, Brown Bradshaw & Moffat, Criminal Defense and Appellate Practice

Judge Fred Voros, Former Court of Appeals Judge

STAFF

Cathy Dupont

Lisa Collins

GUEST

Joanna Landau

1. **Welcome and Member Introduction**

Judge Jones welcomed the members to the meeting, and asked each member to introduce themselves and describe the general nature of their practice.

2. **Review of Committee Duties and Staggered Terms**

Judge Jones lead a discussion on the committee duties, and committee members agreed to the following staggered terms:

Staggered Terms:

2020 Term expires

Judge Fred Voros

Alan Mouritsen

2021 Term expires

Ann Marie Taliaferro

John Nielsen

Debra Nelson

2022 Term expires

Judge Linda Jones
Margaret Lindsay
Monica Maio

Nancy Sylvester is the representative from the AOC General Counsel's Office (a position created by Rule 11-401 which established the committee).

3. **Discussion of Committee Duties**

Joanna Landau discussed her view of the role of the committee. The committee discussed their duties under Rule 11-401, timelines for completing their work, and the 10th Circuit approach to creating an appellate roster. The committee decided to create working groups to focus on specific duties under Rule 11-401.

4. **Subcommittee Work Groups**

Two subcommittees were created:

Application Work Group

Debra Nelson, Ann Marie Taliaferro, Monica Maio.

Goal: Develop application and circulate raft to committee by third week of July.

Rules and Statute Work Group

Margaret Lindsay, Alan Mouritsen, John Nielsen, Nancy Sylvester, Joanna Landau

Goal: Recommend amendments to Rule 11-401, URAP 55, 38b, URCrP 8, and 78A-6-1111 by September, so the committee can send recommendations to the appropriate advisory committees. Consider asking a member of the juvenile rules committee to provide input for URAP 55.

5. **Term on Roster 11-401(2)(F)**

Judge Jones proposed changing the retention from two to three years. The committee agreed.

Tab B

APPLICATION FOR MEMBERSHIP UTAH APPELLATE ROSTER

Pursuant to Rule---, an appellate roster is established of attorneys eligible for appointment by the courts of this state to represent indigent parties on appeal to the Utah Supreme Court and the Utah Court of Appeals. ("Utah Appellate Roster"). The Utah Appellate Roster shall consist of attorneys skilled in handling criminal, juvenile delinquency, and abuse, neglect and dependency appeals.

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To be considered for membership membership on the Utah Appellate Roster, applicants must meet the criteria contained in [redacted]. An attorney must be and continuously remain a member in good standing of the Utah Bar, must be familiar with the Utah Rules of Appellate Procedure the rules of Appellate Procedure, and must demonstrate knowledge of appellate practice as shown by experience, training, or legal education. Applicants must also be willing to accept appointments during the membership term.

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Comment [DN1]: Or "familiar with the Utah Rules of Appellate Procedure"

To apply for membership inclusion on to the Utah Appellate Roster, you must submit the following materials by e-mail as an attachment in Word and .pdf format to [redacted]:

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- 1) This questionnaire, fully completed; printed in .pdf
- 2) ———A current resume; and; in .pdf; and
- 3) ———Two appellate briefs with a certification that the applicant was substantially responsible for drafting the briefs.

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—————Please feel free to attach additional pages if needed.

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—————In the subject line of the email, please state and -list the following:
Application for Membership to the Utah Appellate Roster, Last name of applicant, first name of applicant, middle initial.

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Comment [DN2]: I didn't know where to stick this requirement but I thought it would be helpful to include.

—————APPLICATIONS ARE DUE NO LATER THAN 5:00 P.M. ON [redacted]

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LATE APPLICATIONS WILL NOT BE CONSIDERED.

EXTENSIONS FOR FILING WILL NOT BE CONSIDERED.

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INCOMPLETE APPLICATIONS WILL NOT BE CONSIDERED

**IT IS THE SOLE RESPONSIBILITY OF THE APPLICANT TO SUBMIT
TIMELY AND COMPLETE APPLICATIONS WITH ALL REQUIRED
SUPPORTING DOCUMENTATION. NO NOTICE WILL BE PROVIDED TO
THE APPLICANT REGARDING UNTIMELY AND INCOMPLETE
CONCERNING FAILURE TO COMPLETE THE APPLICATIONS.**

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-OR TO SUBMIT THE REQUIRED DOCUMENTATION-

Please Direct any questions regarding this application to the Clerk of Court (303.844.3157-----) or the Appellate Standing Committee Chair, ----- . You may also direct questions to any member of the Standing Committee:

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Chair, Judge Linda Jones

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Margaret Lindsay, Asst. Director Juvenile Appeals Division, Utah County Public Defender Assoc.

Monica Maio, Utah Juvenile Defender Attorneys

Alan S. Mouritsen, Parsons Behle & Latimer

Debra M. Nelson, Appellate Attorney, Salt Lake Legal Defender Association

John Nielsen, Criminal Appeals Division of Utah Attorneys General Office
Nancy Sylvester, Office of General Counsel of Administrative Office of Courts

Ann Marie Taliaferro, Brown Bradshaw & Moffat

Fred Voros, Former Court of Appeals Judge

**THANK YOU FOR YOUR TIME AND WILLINGNESS
TO REPRESENT INDIGENT LITIGANTS IN THE UTAH COURTS**

Which Appellate Roster(s) do you wish to be considered for? (Check all that Apply)

- Criminal Appeals
- Juvenile Delinquency Appeals
- Abuse, Neglect and Dependency Appeals

1. Contact Information

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Name:

Firm Name:

Office Address:

City, State, Zip Code:

Phone Number:

Mobile Number:

Email Address:

Best Way to Contact You:

2. Are you an active member in good standing of the Utah State Bar ?

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 Yes No

3. Bar Admissions (List all bar admissions and date admitted).

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4. Do you have an established law practice in the State of Utah?

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 Yes No ~~Yes No~~

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Please describe the nature and location of your practice (e.g., "My practice largely consists of state trial work (85%) with some appellate work in Utah County").

5. Disciplinary History

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a. Have you ever been disciplined, or are you the subject of any pending disciplinary proceeding, in the bar of any court (state or federal)?

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~~_____~~ Yes No ~~Yes No~~

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~~b. _____~~ In the past three years, have you been the subject of an order issued by either appellate court imposing sanctions against counsel, discharging counsel, or taking other equivalent action against counsel because of counsel's substandard performance before an appellate court?

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~~_____~~ Yes No
~~_____~~ Yes No

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~~e. _____~~ If you answered "yes" to either question, please explain: N/A

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~~N/A~~

6. Education & Degrees (undergraduate, graduate and law school)

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7. Practice & Experience

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~~a. _____~~ Have you *been personally solely/personally responsible for briefing* the merits in at least three appeals within the past three years or in 12 appeals total?

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~~_____~~ Yes No
 Yes No

b. If your answer to 7(a) is no, have you *substantially briefed* the merits of at least three appeals within the past three years while directly supervised by an appellate attorney who meets the requirements of 7(a)?

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Yes No

~~c. _____~~ Have you completed the equivalent of 12 months of full time employment, either as an attorney or as a law student or in an appellate practice setting, which may include

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but is not limited to appellate judicial clerkships, appellate clerkships with the Utah Attorney General's Office, or appellate clerkships with a legal services agency that represents indigent parties on appeal; and during that employment had significant personal involvement in researching legal issues, preparing appellate briefs or appellate opinions, and gained experience with the Utah Rules of Appellate Procedure?

Yes No

———If yes, please explain.

- d. Provide a general description of your practice, and include an approximate caseload with a percentage of your practice that is devoted to appeals.

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- e. State the approximate number of appellate cases in which you *substantially authored the appellate* briefs before any state or federal appellate court within *the last five years*. Include the name of the appellate court (*i.e., Utah Court of Appeals, Tenth Circuit Court of Appeals, etc.*).

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_____ (approximate # of cases)

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_____ Appellate Courts:

- f. Please identify *all appellate* cases in which you served as counsel of record on appeal and provide citations to all appellate decisions.

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- g. Please identify a sample of cases in which you *substantially authored* the briefs before the Utah Supreme Court or the Utah Court of Appeals. Please provide the case name, and number, citation to an appellate decision if any, and indicate whether you presented oral argument.

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h. Please identify a sample of cases in which you *substantially authored* the briefs before any other state or federal appellate court. Please provide the case name, -and-number- citation to an appellate decision if any, and indicate whether you presented oral argument.

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8. List any Continuing Legal Education (CLE) courses that you have taken in the last five years that may be relevant to appellate advocacy and appellate skills.

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9. Panel Memberships

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a. Are you currently a member, or have you ever been a member,- of any state or federal *trial panels* in which you are appointed to represent indigent litigants?

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Yes No

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— Please list:

b. Are you currently a member, or have you ever been a member,- of any state or federal *appellate panels* in which you are appointed to represent indigent litigants?

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Yes No

— Please list:

10. Have you ever been employed as a prosecutor, public defender, law clerk, judge or justice?

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Yes No

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If yes, please describe the position, the name of your employer and the approximate dates of service.

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11. Special Qualifications

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a. Do you have a particular area of legal expertise such as immigration law, non-capital habeas corpus, white collar fraud, Indian law, etc?

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_____ Yes No

_____ If yes, please describe.

b. Are you fluent in another language?

_____ Yes No

_____ If yes, please describe.

c. Please describe any special qualifications, experience, or any other considerations relevant to the particular Roster you are applying for:

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_____ Criminal Appeals:

_____ Juvenile Delinquency Appeals:

Abuse, Neglect and Dependency Appeals:

12. Availability

The Utah Appellate Roster is a roster from which all courts of this state may use to appoint an attorney to an indigent defendant for appeal. This means that you may be called upon to accept cases in counties or areas other than that in which you have an office or reside. Assuming that you are *not required* to undertake any representation for which you may be called, will you accept appeals from other counties or areas other than that in which you reside?

Yes No Usually

Are there any areas from which you *will not* accept cases for any reason? (e.g., too far away, conflict with attorneys, etc.).

Yes No

If yes, please list areas *from where you will not accept cases* (counties or specific district courts):

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13. References

Please list the names, addresses, and telephone number of two legal references who can assess your skills relevant to this appellate panel attorney application.

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14. Certifications, Signature and Date

By signing below,

I certify that the information contained in this application is true and correct to the best of ~~my~~ knowledge.

I certify that I am currently an active member of the Utah State Bar in good standing.

I certify that I was substantially responsible for drafting the two briefs I ~~am now~~ submitting to the Committee ~~as part of my for consideration in application~~ ing for membership to the Utah Appellate Roster.

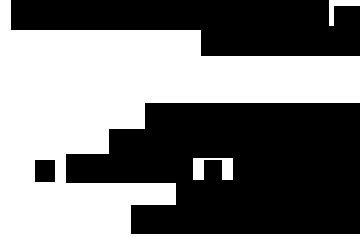
I certify that I have a working knowledge of appellate procedure and am competent to accept membership on the Utah Appellate Roster.

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I certify that I have sufficient time and administrative support to accept an appointment to represent indigent parties on appeal and to provide the effective assistance of counsel in every case and a willingness to commit those resources to that representation.

Signature _____

Date _____



[REDACTED]

[REDACTED]

Re: *Application to District of Colorado Criminal Justice Act Panel*

Dear [REDACTED]:

I write to you as Chair of the Standing Committee for the Criminal Justice Act Panel for the District of Colorado. Last year a new Criminal Justice Act Plan was adopted by the court. Changes were needed since the previous Plan, among other concerns, did not allow the panel size to be adjusted due to fluctuations in filings or provide other qualified applicants who wish to serve an opportunity to become part of the appointment process.

The new plan permits the size and composition of the panel to be modified annually by providing termed appointments. The Court approved a staggered three year implementation for reapplication and requests for admission to the panel. I am pleased to inform you that your request for membership on the Criminal Justice Act Panel has been approved.

Your appointment is effective immediately but you will not be eligible for case assignments until you attend an eVoucher training that is being offered on [REDACTED] [REDACTED] [REDACTED]. This training lasts for approximately 60 minutes. Additional information will be forwarded to your attention. If you cannot attend on either one of these dates please contact [REDACTED]. On [REDACTED] there is a full day of training that focuses on Federal Court practice that we strongly encourage you to attend. More information on this training can be found at cocja.org under training and resources.

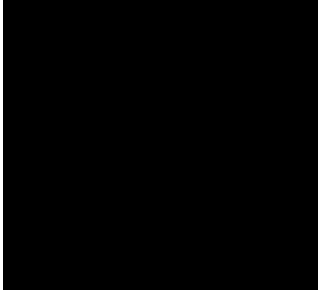
Thank you for joining the Criminal Justice Act Panel and your commitment to providing effective defense for indigent criminal defendants. We look forward to your participation.

Sincerely,



Chair: CJA Standing Committee





Re: *Application to District of Colorado Criminal Justice Act Panel*

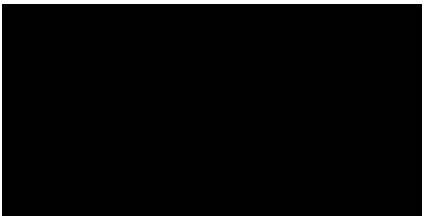
Dear :

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The new plan permits the size and composition of the panel to be modified annually by providing termed appointments. The Court approved a staggered three year implementation for reapplication and requests for admission to the panel. I am pleased to inform you that your request to continue membership on the Criminal Justice Act Panel has been approved.

Thank you again for your continuing commitment to providing effective representation in the defense of indigent criminal defendants.

Sincerely,



Chair: CJA Standing Committee





[Redacted]

[Redacted]

Re: *Application to District of Colorado Criminal Justice Act Panel*

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The new Plan permits the size and composition of the panel to be modified annually by providing termed appointments. The Court approved a staggered three year implementation for reapplication and requests for admission to the Panel. I regret to inform you that your membership on the Criminal Justice Act Panel has not been renewed effective upon receipt of this letter. If you are currently counsel of record on an active case your appointment on that case will continue until completion.

The Committee is sincerely appreciative of your commitment to the Panel and this is not a comment on your dedication as a criminal defense attorney. The new plan assures that the Standing Committee will consider applications for membership every year. You are welcome to apply during next year's application process.

Sincerely,

[Redacted signature block]



[Redacted]

Good afternoon and Happy Friday,

Congratulations! You have been selected and approved by the United States District Court for the District of Colorado to serve on the Criminal Justice Act (CJA) Panel beginning in July. My apologies for this late notice – the judge’s meeting that was scheduled for the first week of May was delayed significantly, which is why only now are you getting the news.

We have scheduled a training for [Redacted] for you and there is no cost for this training. It is meant to give you an introduction to federal practice and the Panel. Details and registration are at: www.cocja.org. Please email [Redacted] for more information or questions about that. I also copied her above.

If you have any non-training related questions, please feel free to contact me.

Sincerely,

[Redacted]

Chair
CJA Standing Committee

[Redacted]

[Redacted]

[Redacted]

RE: Application to the Tenth Circuit Court of Appeals Criminal Justice Act Panel

Dear _____ :

I write to you as Chair of the Standing Committee for the Criminal Justice Act Panel of the Tenth Circuit Court of Appeals. The Committee has completed its review of applications to the Panel, and the Court has approved its recommendations. I regret to inform you that the Committee did not approve your admission to the Panel this year.

The demand for membership on the Panel cannot currently support the admission of every qualified applicant. However, the new Plan assures there will be openings for membership on the Panel every year. You are welcome to apply next summer, when the application period re-opens.

The Committee is sincerely appreciative of your commitment to service under the Criminal Justice Act, and you should not consider its decision as a comment on your abilities as a dedicated criminal defense attorney.

Thank you for your interest.

Very truly yours,

Chair, 10th Circuit Criminal Justice Act Standing Committee

cc: Elisabeth A. Shumaker, Clerk of the Court
10th Circuit Criminal Justice Act Standing Committee

RE: Application to the Tenth Circuit Court of Appeals Criminal Justice Act Panel

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Very truly yours,

[REDACTED]
Chair, 10th Circuit Criminal Justice Act Standing Committee

cc: Elisabeth A. Shumaker, Clerk of the Court
10th Circuit Criminal Justice Act Standing Committee

[REDACTED]

[REDACTED]

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[REDACTED]
Chair, 10th Circuit Criminal Justice Act Standing Committee

cc: Elisabeth A. Shumaker, Clerk of the Court
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[REDACTED]

[REDACTED]

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Very truly yours,

[REDACTED]

Chair, 10th Circuit Criminal Justice Act Standing Committee

cc: Elisabeth A. Shumaker, Clerk of the Court
10th Circuit Criminal Justice Act Standing Committee

[REDACTED]

[REDACTED]

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Very truly yours,

[REDACTED]
Chair, 10th Circuit Criminal Justice Act Standing Committee

cc: Elisabeth A. Shumaker, Clerk of the Court
10th Circuit Criminal Justice Act Standing Committee

[REDACTED]

[REDACTED]

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[REDACTED]
Chair, 10th Circuit Criminal Justice Act Standing Committee

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10th Circuit Criminal Justice Act Standing Committee