

**SUPREME COURT'S COMMITTEE  
ON APPELLATE REPRESENTATION**

**Minutes  
March 11, 2019  
Executive Dining Room  
Matheson Courthouse  
450 S. State St.  
Salt Lake City, Utah 84111  
8:00 a.m. – 2:00 p.m.**

*Honorable Linda Jones, Presiding*

**Attendees:**

Judge Linda Jones, Chair  
Margaret Lindsay  
Monica Maio  
Alan Mouritsen  
Debra Nelson  
John Nielsen  
Nancy Sylvester  
Ann Marie Taliaferro  
Judge Fred Voros

**Staff:**

**Excused:**

Cathy Dupont, Staff  
Jeni Wood, Recording Secretary

**Guests:**

Joanna Landau

**1. Welcome and Member Introduction (Judge Linda Jones)**

Judge Linda Jones welcomed the members to the meeting.

**2. Review and Recommendations for Appellate Roster (Judge Linda Jones)**

The committee members discussed the roster applicants' qualifications and voted on recommendations to the Board of Appellate Court Judges. The committee also reviewed the roster rejection letter in comparison to the 10<sup>th</sup> Circuit Court letter and made several amendments.

**3. Review and approval of FAQ's (Judge Linda Jones)**

The committee reviewed the frequently asked questions that had been compiled during the first round of applications and the committee's proposed responses. The committee added several additional FAQ's and finalized the document as follows:

**FAQ: 1. How do you apply to the Appellate Roster?**

**Response:** At least once each year, the Standing Committee on Appellate Representation will announce that it is accepting applications for the Utah Appellate Roster. The announcements will be published on the Utah State Bar listserv and with other organizations associated with legal defense. The application will direct to whom the application is to be submitted and the deadline for submitting it.

To be considered for membership on the Utah Appellate Roster, applicants must meet the criteria contained in Rule 11-401. An attorney who applies for or is listed on the Utah Appellate Roster must be a member in good standing with the Utah Bar, must be familiar with the Utah Rules of Appellate Procedure, and must demonstrate knowledge of appellate practice as shown by experience, training, and/or legal education. An attorney listed on the Utah Appellate Roster must also be willing to accept appointments during the membership term and have adequate administrative support.

To apply for inclusion on the Utah Appellate Roster, an attorney must submit the following materials:

1. Application, fully completed;
2. A current resume;
3. Two appellate briefs with a certification that the applicant was substantially responsible for drafting the briefs; and
4. If applying for appointment for appeals from child welfare proceedings, at least one Rule 55 Petition.

Please see FAQ 2 for more information.

**FAQ: 2. What are the qualifications for the Appellate Roster?**

**Response:** To qualify for the Appellate Roster, you must:

- Demonstrate that you have briefed the merits in at least three appeals within the past three years or you have briefed 12 appeals total, or you are directly supervised by an attorney with such experience;
- Be a member of the Utah State Bar in good standing;
- Have knowledge of appellate practice as shown by experience, training, and/or legal education;
- Submit at least two appellate briefs with a certification that you were substantially responsible for drafting the briefs;
- Provide citations for all appellate decisions in which you were counsel of record;
- Certify that you have sufficient time and administrative support to accept an appointment to represent indigent parties on appeal and to provide effective assistance of counsel in every case and a willingness to commit those resources to that representation; and
- If you are applying for the child welfare roster, submit an Appellate Rule 55 petition that you have prepared.

You will not qualify for the Appellate Roster if, within the preceding three years, you have been the subject of an order issued by an appellate court imposing sanctions against you as counsel, discharging you as counsel, or taking other equivalent action against you as counsel because of your substandard performance; or if you have been removed from the Appellate Roster within the past year.

**FAQ: 3. My acceptance letter says I have to find a mentor. How do I go about finding a mentor and certifying my briefs?**

**Response: Finding a mentor**

Applicants, who otherwise qualify for the Appellate Roster but who have not briefed the merits in at least three appeals within the past three years or in 12 appeals total, may be placed on the Appellate Roster subject to a mentor requirement. A mentor must meet the following criteria:

- Briefed the merits in at least three appeals within the past three years or in 12 appeals total;
- Be a member of the Utah State Bar in good standing; and
- Have knowledge of appellate practice as shown by experience, training, and/or legal education.

A person does not qualify as a mentor if, within the preceding three years, he or she

- has been the subject of an order issued by an appellate court imposing sanctions against counsel, discharging counsel, or taking other equivalent action against counsel because of counsel's substandard performance; or
- has been removed from the Appellate Roster within the past year.

An attorney on the roster qualifies to be a mentor unless that attorney is also subject to the mentoring requirement. An attorney with a dedicated appellate practice who meets the above qualifications may also be a mentor. For mentorship information, please contact the Indigent Defense Commission at IDC@utah.gov.

**Certifying your briefs**

You are not required to name your mentoring attorney nor is there a specific requirement for how the certification appears in your brief. But best practice is to place the following on a separate page after the certificate of service:

I hereby certify that I was directly supervised by a mentor qualified under Utah Code of Judicial Administration Rule 11-401(2)(E) in the preparation of this appeal.

/s/ [Your name]

Date: \_\_\_\_\_

**FAQ: 4. How does the roster work?**

**Response:** To be appointed to represent indigent defendants on appeal, an attorney must complete three steps:

First, the attorney must be placed on the roster. Only attorneys on the roster are eligible for appointment to represent indigent parties on appeal.

Second, the attorney must contract with a county. In Utah, counties contract with defense counsel to represent indigent parties at trial and on appeal. Counties may contract exclusively with an attorney or attorneys to handle all appeals or to serve as conflict counsel on appeal; or counties may invite bids from attorneys on the roster for a particular case.

Third, the lawyer must be appointed by the district or juvenile court. District and juvenile court judges appoint attorneys who both appear on the roster and hold county contracts.

**FAQ: 5. Once I am on the roster, how do I get appointed to represent a party on appeal?**

**Response:** You should contact the county where you wish to be appointed to represent indigent parties or you can wait for the county to contact you.

Please see FAQ 4 for more information.

**FAQ: 6. How do I get paid?**

**Response:** If you have been appointed through the roster to represent an indigent party, contact the county immediately regarding payment, and if you need help, email the Indigent Defense Commission at [IDC@utah.gov](mailto:IDC@utah.gov).

**FAQ: 7. What if I apply for the Appellate Roster and I am rejected?**

**Response:** If you apply for the Appellate Roster and you are rejected, you are invited to reapply when the application period opens. We appreciate your willingness to serve indigent parties on appeal to the Utah Supreme Court and the Utah Court of Appeals.

**4. Discussion: Rule 11-401**

The committee discussed the following rule topics and amendments:

- Mentoring when required for maintaining roster eligibility;
- Rolling admissions;
- Addressing the IDC's role on the committee;
- Addressing appeals of private parental termination cases from the district court;
- Merging the provisions of Appellate Rule 38B into CJA Rule 11-401 (amending Rule 11-401; repealing Rule 38B); and
- Addressing the tension between Rule 55 and the child welfare appellate roster (amending Rule 58).

The committee voted to send along the amendments.

**5. Discussion: circulating the roster**

The committee discussed the best way to circulate the roster to the counties and the district and juvenile courts. The committee discussed placing a link to the roster on the

courts' website and having the Indigent Defense Commission assist with communicating to the counties about where to find it. The committee also discussed notice generally to counties of this committee's work and the need for more transparency and communication on why the roster exists, when the application periods open, and when the roster has been updated.

**6. Other Business**

There was no additional business discussed.

**7. Adjourn**

The meeting adjourned at 3:30 p.m.