

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

Agenda

**July 29, 2019
Council Room
Matheson Courthouse
450 S. State St.
Salt Lake City, Utah 84111**

Honorable Linda Jones, Presiding

- | | | |
|----|--|--------------------------|
| 1. | Welcome and Approval of Minutes
Tab 1 | Judge Linda Jones, Chair |
| 2. | Code of Judicial Administration Rule 11-401
Tab 2 | Nancy Sylvester |
| 3. | Vetting Process (Board of Appellate Judges Recommendation)
Tab 3 <ul style="list-style-type: none"> a. Transparency b. FAQ review c. Vetting process d. Form announcement e. Letters to applicants (accepted and rejected) | All |
| 4. | Next Application Process <ul style="list-style-type: none"> a. Set opening and closing application dates b. Schedule teleconference to assign applications for vetting
(1 week after closing date) c. Schedule meeting to review applications
(October for half-day meeting) | All |
| 5. | Adjourn | |

Tab 1

**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 10th 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 listserve 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.

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.

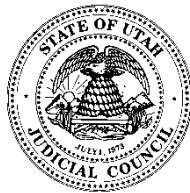
6. Other Business

There was no additional business discussed.

7. Adjourn

The meeting adjourned at 3:30 p.m.

Tab 2



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

MEMORANDUM

Hon. Mary T. Noonan
Interim State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

To: Appellate Representation Committee
From: Nancy Sylvester
Date: July 17, 2019
Re: Amendments to CJA11-401 and URAP058 and Repeal of URAP038B

As Judge Jones mentioned previously, the Board and the Supreme Court have asked this committee to take a look at Rule 11-401 to assess a couple of matters. Specifically, the Board and Court are interested in more explanation about our process for vetting individuals, and they would like us to take a closer look at the "reconsideration" language/process in the rule.

The rule allows attorneys, who have not been included on the roster, to petition for reconsideration in the form of a letter to the Board of Appellate Court Judges. This last round, an applicant submitted such a letter, and the Board voted to include him on the roster. That process prompted discussion around the reconsideration process and whether we are providing enough information to applicants, who have been rejected.

I have made some suggested changes to address the transparency concerns in paragraph (2)(D), Roster Selection. There may be some additional changes to be made in paragraph (2)(G), Reconsideration.

The following summarizes the majority of the other edits to this rule or Appellate Rules 38B and 58. Some of these changes were already approved by this committee and/or the Appellate Rules Committee but have not yet been approved by the Supreme Court:

- Updating terminology to address legislative changes ("indigent defense services provider");
- 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 (adding a statutory reference);

The mission of the Utah judiciary is to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law.

Rule amendment proposals

July 17, 2019

Page 2

- 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).

CJA011-401. Amend.

Draft: July 16, 2019

Rule 11-401. Standing Committee on Appellate Representation

Intent:

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

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

To establish a schedule for recommending the appointment of indigent defense service provider attorneys to, or the removal of indigent defense service provider attorneys from, the appellate roster.

Definitions:

The terms "indigent defense service provider," "indigent individual," and "indigent defense services" are defined in Utah Code Section 78B-22-102.

Applicability:

This rule shall apply to the internal operation of the Board of Appellate Court Judges and the Committee on Appellate Representation and to ~~district and appellate courts of record in indigent criminal cases, juvenile delinquency, and child welfare proceedings~~ cases involving indigent individuals.

Statement of the Rule:

(1) **Establishment.** The Standing Committee on Appellate Representation is hereby established as a committee of the Board of Appellate Court Judges.

(1)(A) **Composition.** The Committee shall consist of one ~~member-attorney from~~ member-attorney from the Office of General Counsel of the Administrative Office of the Courts; one ~~member-attorney~~ member-attorney from the Criminal Appeals Division of the Utah Attorney General's Office; one active or retired trial court judge from either a District or Juvenile court in the state; one active or retired appellate court judge; one private civil appellate attorney; two criminal defense appellate attorneys: at least one of whom is currently practicing in the area of indigent criminal appeals ~~in for an indigent defense provider entity a legal defender's office, under Utah Code § 77-32-302(2)(a) or (2)(b);~~ one attorney practicing in the area of juvenile delinquency defense appeals; ~~and one attorney practicing in the area of child welfare proceedings as defined in Rule 1(f) of the Utah Rules of Appellate Procedure, and one attorney practicing in the area of termination of parental rights proceedings under Section 78B-6-112 child welfare defense appeals.~~ The Director or designee of the Indigent Defense Commission shall be an ex-officio, non-voting member who shall not participate in the committee's recommendation of attorneys for the roster.

(1)(B) **Appointment.** Committee members shall be appointed by the Supreme Court and shall serve staggered four-year terms. The Supreme Court shall select a chair from among the Committee's members. Judges who serve as members of the Committee generally shall not be selected as chair. Committee members shall serve as officers of the court and not as representatives of any client, employer, or other organization or interest group. At the first meeting of the Committee

CJA011-401. Amend.

Draft: July 16, 2019

in any calendar year, and at every meeting at which a new member of the Committee first attends, each Committee member shall briefly disclose the general nature of his or her legal practice.

(1)(C) **Vacancies.** In the event of a vacancy on the Committee ~~due to death, incapacity, resignation or removal~~, the Supreme Court, after consultation with the Committee chair, shall appoint a new Committee member from the same category as the prior Committee member to serve for the remainder of the unexpired term.

(1)(D) **Absences.** In the event that a Committee member fails to attend two consecutive Committee meetings, the chair may notify the Supreme Court of those absences and may request that the Supreme Court replace that Committee member.

(1)(E) **Administrative assistance.** The Administrative Office of the Courts shall coordinate staff support to the Committee, including the assistance of the Office of General Counsel in research and drafting ~~and the coordination of secretarial support.~~

(2) **Appellate Roster.** The Board of Appellate Judges shall create and maintain an appellate roster of indigent service provider attorneys skilled in handling criminal, juvenile delinquency, and child welfare proceedings as defined in Rule 1(f) of the Utah Rules of Appellate Procedure, and termination of parental rights proceedings under Section 78B-6-112. ~~abuse, neglect and dependency appeals.~~

(2)(A) **Purpose of the Committee.** The purpose of the Committee shall be to recommend to the Board of Appellate Court Judges indigent service provider attorneys for inclusion on an appellate roster of indigent service providers attorneys eligible for appointment by the courts of this state to represent indigent ~~parties~~ individuals on appeal before the Utah Supreme Court or the Utah Court of Appeals ~~pursuant to Rule 38B of the Utah Rules of Appellate Procedure.~~ Except as specified in paragraphs ~~(2)(G)~~ (2)(G) of this rule, only indigent service providers attorneys on the roster shall be eligible for such court appointments.

(2)(B) **Committee recommendations.** The Committee shall consider and recommend indigent service provider attorneys for inclusion on the appellate roster based on the eligibility criteria listed in subsection (2)(C) together with any other factor bearing on an applicant's ethics, diligence, competency, and willingness to fairly, efficiently, and effectively provide appellate representation to indigent ~~parties~~ individuals on appeal. The Committee may also recommend the removal of an indigent service provider attorney from the roster.

(2)(C) **Eligibility criteria.** To be considered for inclusion on the roster, an applicant must complete an application in a form provided by the Committee and must:

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

~~(i) comply with the requirements of rule 38B of the Utah Rules of Appellate Procedure, sections (b) through (e);~~

(2)(C)(ii) be a member of the Utah Bar in good standing;

CJA011-401. Amend.

Draft: July 16, 2019

~~(2)(C)(iii) submit at least two appellate briefs to the Committee with a certification that the applicant was substantially responsible for drafting the briefs;~~ (2)(C)(iii) demonstrate knowledge of appellate practice as shown by experience, training, or legal education;

(2)(C)(iv) certify that the attorney has not, within the preceding three years, been the subject of an order issued by any 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;

(2)(C)(v) not have been removed from the appellate roster within the past year;

(2)(C)(vi) submit at least two appellate briefs to the Committee with a certification that the applicant was substantially responsible for drafting the briefs;

(2)(C)(vii) submit an Appellate Rule 55 petition if the person is applying to be on the roster for appeals from child welfare proceedings;

~~(2)(C)(iv) demonstrate knowledge of appellate practice as shown by experience, training, or legal education;~~

(2)(C)(viii) provide citations for all appellate decisions in which the applicant was counsel of record; and

~~(2)(C)(2)(C)(ix)~~ (2)(C)(ix) certify that the applicant has sufficient time and administrative support to accept an appointment to represent provide indigent defense services for indigent parties individuals on appeal and to provide the effective assistance of counsel in every case and a willingness to commit those resources to that representation.

(2)(D) **Roster Selection.** The Board of Appellate Court Judges shall approve or disapprove the recommendations of the Committee with respect to attorneys to be included on the appellate roster. The Board may not add to the roster an attorney who is not recommended by the Committee. An attorney who is not selected for inclusion on the appellate roster will be provided the reason(s) for the attorney's exclusion.

(2)(E) **Mentoring.** If an indigent defense services provider attorney is selected for the roster on the condition that the attorney have a mentor, then the attorney must select a mentor who meets the qualifications set forth in this rule at paragraphs (2)(C)(i)-(v). A mentor must have briefed the merits in at least three appeals within the past three years or in 12 appeals total. The indigent defense services provider attorney subject to the mentoring requirement shall certify in each brief filed on behalf of an indigent party that the attorney was directly supervised in drafting the brief by a mentor qualified under paragraphs (2)(C)(i)-(v). The indigent defense services provider attorney is not required to name the mentor in their certification.

~~(2)(F)~~ **Removal.** The Board may also at any time remove an indigent defense services provider attorney from the appellate roster based on an the indigent defense services provider attorney's qualifications, skills, experience, and or prior performance in the any Utah appellate courts, or the

CJA011-401. Amend.

Draft: July 16, 2019

indigent defense services provider attorney's failure to maintain eligibility under paragraph (2)(H). The Board may not add to the roster an attorney who was not recommended by the Committee.

~~(2)(EGF)~~ **Reconsideration.** An indigent defense services provider attorney who submitted an application to the Committee but was not chosen by the Board for inclusion on the appellate roster, or who was removed from the roster, may file a petition for reconsideration in the form of a letter submitted to the Board of Appellate Court Judges. The letter must be submitted within 30 days from the date of the removal notice. The petitioner shall submit an original letter and twelve copies.

(2)(FHG) **Retention.** To maintain eligibility, an indigent defense services provider attorney must be recommended by the Committee and reappointed by the Board of Appellate Court Judges every two-three years by submitting a renewal request to the Committee by January-September 1 of the indigent defense services provider's attorney's third year on the roster, in which the attorney reports his or her MCLE compliance to the Utah State Bar; provided, however, that the first such request shall not be due earlier than the first January 1 at least two years after the date on which the attorney originally qualified to be on the roster. The renewal request shall include the following:

(2)(FHG)(i) a certification that the indigent defense services provider attorney is a member of the Utah Bar in good standing;

(2)(FHG)(ii) a certification that the indigent defense services provider attorney has not, within the preceding three years, been the subject of an order issued by either any appellate court imposing sanctions against counsel, discharging counsel, or taking other equivalent action against counsel because of counsel's the indigent defense services provider attorney's substandard performance before either an appellate court;

(2)(FHG)(iii) a showing that the indigent defense services provider attorney has maintained competence in appellate practice, which showing may be achieved by:

(2)(FHG)(iii)(a) submitting two appellate briefs filed with appellate courts during the previous two years, together with a certification that the attorney was substantially responsible for drafting the briefs;

(2)(FHG)(iii)(b) certification that the indigent defense services provider attorney has attended at least six hours of CLE dealing with the area of appellate practice in which the attorney has accepted court-appointments on appeal in the previous two years; or

(2)(FHG)(iii)(c) an equivalent demonstration of continued competence.

(2)(GIH) **Exemption.** Notwithstanding any other provision of this rule, any indigent defense services provider attorney currently employed in a county or other regional legal defender's office, under Utah Code § 77-32-302(2)(a) or (2)(b) indigent defense service provider entity, to provide court-appointed representation and defense resources indigent defense services on appeal, shall be independently eligible for appointment to represent indigent parties individuals on appeal. - This paragraph does not apply to an indigent defense services provider attorney who has contracted with

Comment [NS1]: Do we need to do anything on this in light of recent developments?

CJA011-401. Amend.

Draft: July 16, 2019

a county in the indigent defense services provider attorney's individual capacity to provide ~~court-~~
~~appointed representation and defense resources~~indigent defense services on appeal.

~~(2)(H) **Disqualification.** Nothing in this rule is intended to supplant or create an exception to the
disqualification provisions of Rule 38B of the Utah Rules of Appellate Procedure.~~

(3) **Annual Schedule.** The Committee shall meet at least annually and shall submit its

recommendations to the Board of Appellate Court Judges by ~~February~~ December 31 of each year. If the
Committee determines that additional recommendations should be submitted to the Board of Appellate
Court Judges, the Committee may call for additional applications at any time. The Board of Appellate
Court Judges shall at its next meeting thereafter approve or disapprove the recommendations of the
Committee with respect to attorneys to be included on the appellate roster.

1 **Rule 58. Ruling.**

2 (a) After reviewing the petition on appeal, any response, and the record, the Court of Appeals may
3 rule by opinion, ~~or memorandum decision, or order~~. The Court of Appeals may issue a decision or may
4 set the case for full briefing under rule 24. The Court of Appeals may order an expedited briefing schedule
5 and specify which issues shall be briefed. ~~If the issue to be briefed is ineffective assistance of counsel,~~
6 ~~the Court of Appeals may order the juvenile court to appoint conflict counsel within 15 days for briefing~~
7 ~~and argument.~~

8 **(b) If the Court of Appeals sets the case for briefing under rule 24 and the petitioner has appointed**
9 **counsel, the Court of Appeals will remand to the juvenile court to appoint appellate counsel pursuant to**
10 **Rule 11-401 of the Utah Code of Judicial Administration.**

11 **(bc)** If the Court of Appeals affirms, reverses, or remands the juvenile court order, judgment, or
12 decree, further review pursuant to Rule 35 may be sought, but refusal to grant full briefing shall not be a
13 ground for such further review.

14

15

URAP038B

Draft: March 11, 2019

Rule 38B. Qualifications for Appointed Appellate Counsel.

~~(a) In all appeals where a party is entitled to appointed counsel, only an attorney proficient in appellate practice may be appointed to represent such a party before either the Utah Supreme Court or the Utah Court of Appeals.~~

~~(b) The burden of establishing proficiency shall be on counsel. Acceptance of the appointment constitutes certification by counsel that counsel is eligible for appointment in accordance with this rule.~~

~~(c) Counsel is presumed proficient in appellate practice if any of the following conditions are satisfied:~~

~~(c)(1) Counsel has briefed the merits in at least three appeals within the past three years or in 12 appeals total; or~~

~~(c)(2) Counsel is directly supervised by an attorney qualified under subsection (c)(1); or~~

~~(c)(3) Counsel has completed the equivalent of 12 months of full time employment, either as an attorney or as a law student, in an appellate practice setting, which may include 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 counsel had significant personal involvement in researching legal issues, preparing appellate briefs or appellate opinions, and experience with the Utah Rules of Appellate Procedure.~~

~~(d) Counsel who do not qualify for appointment under the presumptions described above in subsection (c) may nonetheless be appointed to represent a party on appeal if the appointing court concludes there is a compelling reason to appoint counsel to represent the party and further concludes that counsel is capable of litigating the appeal. The appointing court shall make findings on the record in support of its determination to appoint counsel under this subsection.~~

~~(e) Notwithstanding counsel's apparent eligibility for appointment under subsection (c) or (d) above, counsel may not be appointed to represent a party before the Utah Supreme Court or the Utah Court of Appeals if, during the three-year period immediately preceding counsel's proposed appointment, counsel was 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 either appellate court.~~

~~(f) The fact that appointed counsel does not meet the requirements of this rule shall not establish a claim of ineffective assistance of counsel.~~

Comment [NS1]: You have to have been substantially responsible for at least 2 appellate briefs. Do we even need this in 11-401? The committee determined no. (2)(C) covers some of this already and this language is also in the application.

Comment [NS2]: This is dealt with in new paragraph (f) of Criminal Rule 8.

Comment [NS3]: This is now in 11-401 in eligibility and removal.

Comment [NS4]: The committee thinks this is irrelevant. This is more of a truism and will depend on the facts of any individual case.

Advisory Committee Note - This rule does not alter the general method by which counsel is selected for indigent persons entitled to appointed counsel on appeal. In particular, it does not change the expectation that such appointed counsel will ordinarily be appointed by the trial court rather than the appellate court. The rule only addresses the qualifications of counsel eligible for such appointment. See generally *State v. Hawke*, 2003 UT App 448 (2003).

Tab 3

Utah Appellate Roster Frequently Asked Questions

FAQ	Response
1. How do you apply to the Appellate Roster?	<p>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 listserve 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.</p> <p>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.</p> <p>To apply for inclusion on the Utah Appellate Roster, an attorney must submit the following materials:</p> <ol style="list-style-type: none">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; and4. If applying for appointment for appeals from child welfare proceedings, at least one Rule 55 Petition. <p>Please see FAQ 2 for more information.</p>

<p>2. What are the qualifications for the Appellate Roster?</p>	<p>To qualify for the Appellate Roster, you must:</p> <ul style="list-style-type: none">• 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. <p>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.</p>
---	--

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

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: _____

4. How does the roster work?	<p>To be appointed to represent indigent defendants on appeal, an attorney must complete three steps:</p> <p>First, the attorney must be placed on the roster. Only attorneys on the roster are eligible for appointment to represent indigent parties on appeal.</p> <p>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.</p> <p>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.</p>
5. Once I am on the roster, how do I get appointed to represent a party on appeal?	<p>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.</p> <p>Please see FAQ 4 for more information.</p>
6. How do I get paid?	<p>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.</p>
7. What if I apply for the Appellate Roster and I am rejected?	<p>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.</p>



BOARD OF APPELLATE COURT JUDGES

STANDING COMMITTEE ON APPELLATE REPRESENTATION

JUDGE LINDA JONES

CHAIR

July 29, 2019

(Name)

(Address)

Re: Application to the Utah Appellate Roster

Dear (Name):

I write to you as Chair of Utah's Standing Committee on Appellate Representation. The Committee and the Board of Appellate Court Judges have completed their review of applications to the Utah Appellate Roster. I am pleased to inform you that your application to be included on the Utah Appellate Roster for Criminal Appeals, Child Welfare Appeals, and Juvenile Delinquency Appeals has been approved.

Your appointment is for a two year term, is effective immediately, and you are now eligible for assignment to a case. At the end of your term, you will need to reapply, and as with all applicants, the Committee will review your work for quality and evaluate your eligibility for appointment under Rule 11-401. Thank you for joining the Utah Appellate Roster and for your commitment to providing effective appellate representation to indigent parties on appeal to the Utah Supreme Court and the Utah Court of Appeals. We look forward to your participation.

Sincerely,

Hon. Linda Jones

Chair, Standing Committee on Appellate Representation

cc: Lisa Collins, Clerk of Court of Appeals

Nicole Gray, Clerk of Supreme Court



BOARD OF APPELLATE COURT JUDGES
STANDING COMMITTEE ON APPELLATE REPRESENTATION
JUDGE LINDA JONES
CHAIR

July 29, 2019

(Name)
(Address)

RE: Application to the Utah Appellate Roster

Dear (Name):

I regret to inform you that, pursuant to Rule 11-401 of the Supreme Court Rules of Professional Practice, you have not been included on the roster of attorneys eligible for appointment to represent indigent parties before the Utah appellate courts.

If you are currently under contract with a local government to provide appellate representation, you may complete the terms of that contract, but you may not renew the contract for appellate representation unless you are included on the Utah Appellate Roster. In addition, you may apply for admission to the Utah Appellate Roster next summer, when the application period re-opens.

Thank you for your willingness to serve indigent parties on appeal to the Utah Supreme Court and the Utah Court of Appeals.

Very truly yours,

Hon. Linda Jones
Chair, Standing Committee on Appellate Representation

cc: Lisa Collins, Clerk of Court of Appeals
Nicole Gray, Clerk of Supreme Court