



## Utah Supreme Court's Standing Committee on Appellate Representation

### Agenda

Location: Webex

Date: August 26, 2020

Time: 1:30-3:00 p.m.

<b>Action:</b> Welcome and approval of December 2, 2019 minutes.	Tab 1	Judge Linda Jones, Chair
<b>Discussion:</b> Discuss amendments to Utah Rule of Appellate Procedure 55 to address inconsistency between appellate roster and counsel in child welfare cases.	Tab 2	Adam Trupp, IDC Assistant Director Kirstin Norman, Parental Defense Alliance
<b>Discussion:</b> Aggravated Murder and the appointment of appellate counsel		Joanna Landau, IDC Director
<b>Action:</b> Amendments to 11-401 to incorporate Indigent Defense Office Amendments from <a href="#">SB 139 (2020)</a> .	Tab 3	Joanna Landau, IDC Director
<b>Discussion:</b> Discuss advertising and soliciting applications for the roster. <ol style="list-style-type: none"><li>1. Set dates for circulating the advertisement to the Bar.</li><li>2. Set the deadline for receiving applicant materials.</li><li>3. Set date for a teleconference to divvy up the work to vet applicants.</li><li>4. Set date to discuss applicants.</li></ol>		Judge Linda Jones, Chair Nancy Sylvester
<b>Discussion:</b> Discuss subcommittee's recommendations on: <ol style="list-style-type: none"><li>1. Whether to require accepted applicants to attend appellate advocacy CLEs.</li></ol>		Judge Voros, Monica Maio, and Debra Nelson

2. Whether applicants must show a demonstrated ability in the area for which they are applying. 3. Whether there should be a new category of applicants who are provisionally accepted and required to receive mentoring guiding them in the appellate process.		
<b>Discussion:</b> Old business/new business		

[Committee Website](#)

**Committee Members:**

Judge Linda Jones, Chair

Margaret Lindsay

Monica Maio

Alan S. Mouritsen

Debra Nelson

John Neilsen

Nancy Sylvester

Ann Marie Taliaferro

Judge J. Frederic Voros (Ret.)

# Tab 1

Approval of draft minutes:

Attached are the draft December 2019 minutes for the committee's review and approval.

**Utah Supreme Court's  
Standing Committee on Appellate Representation**

Draft Meeting Minutes  
December 2, 2019  
Scott M. Matheson Courthouse  
Judicial Council Room, Suite N31  
450 S. State Street  
Salt Lake City, UT 84111  
12:00 p.m.–3:00 p.m.

*Honorable Linda Jones, Presiding*

**Attendees:**

Judge Linda Jones, Chair  
Margaret Lindsay  
Monica Maio  
Debra Nelson  
John Nielsen  
Ann Marie Taliaferro  
Judge J. Frederic Voros (Ret.)

**Staff:**

Larissa Lee, Appellate Court Administrator  
Marina Kelaidis, Recording Secretary

**Excused:**

Alan S. Mouritsen

**1. Welcome and approval of November 7, 2019 minutes:** (Judge Linda Jones)

Judge Jones welcomed everyone to the meeting and asked for approval of the minutes.

*John Nielsen moved to approve the November 7, 2019 minutes. Ann Marie Taliaferro seconded the motion, and it passed unanimously.*

**2. Discussion – Review applicant recommendations:** (Judge Linda Jones)

The committee reviewed, discussed, and voted on eight applications for the Utah Appellate Roster.

**3. Other business:**

Judge Jones reminded the committee that applications may be submitted on a rolling basis. If any applications are submitted before the next application period, she will assign the application to a committee member for review and the committee will vote via email or teleconference. The next official application period will open September 2020.

Judge Jones created a subcommittee, consisting of Judge Voros, Monica Maio, and Debra Nelson, to study the following three questions:

1. Whether to require accepted applicants to attend appellate advocacy CLEs.
2. Whether applicants must show a demonstrated ability in the area for which they are applying.
3. Whether there should be a new category of applicants who are provisionally accepted and required to receive mentoring to guide them in the appellate process.

The subcommittee will meet January 22, 2020 from 12:00–2:00 p.m. in the Judicial Council Room at Matheson Courthouse, and again as needed.

**4. Adjournment and next meeting:**

The meeting adjourned at 2:10 p.m. The next committee meeting will be held on April 16, 2020 from 12:00 – 1:00 p.m. via teleconference.

# Tab 2

Amendments to Utah Rule of Appellate Procedure 55:

The Office of Indigent Defense Services and the Parental Defense Alliance have developed a proposal for changes to the rules that apply to appeals from child welfare cases. The proposal seeks to modify rules in order to create consistency with roster requirements in these cases, as well as to be consistent with appellate requirements in all other types of cases.

Rule 55 of the Rules of Appellate Procedure requires trial counsel for an appellant in a child welfare proceeding to file a notice of appeal within 15 days of the judgment. Rule 56 requires that a respondent file a response within 15 days of service of the petition. Neither rule imposes a requirement that the attorney be on the appellate roster. This has long created inconsistency and tension with the requirements of Rule 38(b), in addition to being inconsistent with the requirements and purpose of the appellate roster. More importantly, these rules, which apply only to the child welfare proceedings, create a disadvantage for appellants. The proposed changes will, in large measure, significantly resolve those tensions and improve the procedural fairness experienced by people impacted by child welfare cases.

The proposal also includes other rule changes that seek to create equity between parties in child welfare cases and those in every other class of cases. These changes are not related to roster requirements.

Proposed Changes to Utah Child Welfare Appeals  
Rule 52-59, Utah Rules of Appellate Procedure  
7.28.20 (MPL)

Proposal 1

**Rule 52. Time for Appeal**

No change

**Rule 53. Time for Appeal**

No change

**Rule 54. Transcripts**

No change

**Rule 55. Petition on Appeal**

(a) Filing; dismissal for failure to timely file. The appellant must file with the clerk of the Court of Appeals a petition on appeal within 15 days from ~~the filing of the notice of appeal or the amended notice of appeal~~ **transmission of the record on appeal by the Court of Appeals to each party**. ~~The petition will be deemed filed on the date of the postmark if first class mail is used.~~ **Filing of the petition shall be in accordance with Rule 21(a)**. If the petition on appeal is not timely filed, the court may dismiss the appeal or take other appropriate action. The petition must be accompanied by proof of service. The appellant must serve a copy on counsel of record of each party, including the Guardian ad Litem, or, if the party is not represented by counsel, then on the party at the party's last known address, in the manner prescribed in Rule 21(c).

(b) Preparation by trial counsel. **If the petitioner has appointed counsel in the juvenile court, or has been found to be indigent, then the petition on appeal must be prepared by appellate counsel pursuant to the requirements of Rule 11-401 of the Utah Code of Judicial Administration.** ~~The petition on appeal must be prepared by appellant's trial counsel. Trial counsel may only be relieved of this obligation by the juvenile court upon a showing of extraordinary circumstances. Claims of ineffective assistance of counsel do not constitute extraordinary circumstances but should be raised by trial counsel in the petition on appeal.~~

(c) Format. All petitions on appeal must substantially comply with the Petition on Appeal form that accompanies these rules. The petition must not exceed **15 pages 7,000 words**, excluding the attachments required by Rule 55(d)(7). ~~The petition must be typewritten, printed or prepared by photocopying or other duplicating or copying process that will produce clear, black and permanent copies equally legible to printing, on opaque, unglazed paper 8 inches wide and 11 inches long. Paper may be recycled paper, with or without deinking. The printing must be double spaced, except for matter customarily single spaced and~~

~~indented. Margins must be at least one inch on the top, bottom and sides of each page. Page numbers may appear in the margins. Either a proportionally spaced or monospaced typeface in a plain, roman style may be used. A proportionally spaced typeface must be 13 point or larger for both text and footnotes. Examples are CG Times, Times New Roman, New Century, Bookman and Garamond. A monospaced typeface may not contain more than ten characters per inch for both text and footnotes. Examples are Pica and Courier~~ **shall comply with Rule 27(a) and (b), except that it may be printed or duplicated on one side of the sheet.**

(d) Contents. The petition on appeal must include all of the following elements:

(d)(1) A statement of the nature of the case and the relief sought.

(d)(2) The entry date of the judgment or order on appeal.

(d)(3) The date and disposition of any post-judgment motions.

(d)(4) A concise statement of the material adjudicated facts as they relate to the issues presented in the petition on appeal.

(d)(5) A statement of the legal issues presented for appeal, how they were preserved for appeal, and the applicable standard of review. The issue statements should be concise in nature, setting forth specific legal questions. General, conclusory statements such as "the juvenile court's ruling is not supported by law or the facts" are not acceptable.

(d)(6) The petition should include supporting statutes, case law, and other legal authority **and argument** for each issue raised, including authority contrary to appellant's case, if known.

(d)(7) The petition on appeal must have attached to it:

(d)(7)(A) a copy of the order, judgment, or decree on appeal;

(d)(7)(B) a copy of any rulings on post-judgment motions.

### **Rule 56. Response to petition on appeal.**

(a) Filing. Any appellee, including the Guardian ad Litem, may file a response to the petition on appeal. ~~An original and four copies of the response must be filed with the clerk of the Court of Appeals within 15 days after service of the~~ appellant's petition on appeal. **Filing of the petition shall be in accordance with Rule 21(a).** It shall be accompanied by proof of service. ~~The response shall be deemed filed on the date of the postmark if first class mail is utilized.~~ The appellee shall serve a copy on counsel of record of each party, including the

Guardian ad Litem, or, if the party is not represented by counsel, then on the party at the party's last known address, in the manner prescribed in Rule 21(c).

(b) Format. A response shall substantially comply with the Response to Petition on Appeal form that accompanies these rules. The response shall not exceed 15 pages **7,000 words**, excluding any attachments, and shall comply with Rule 27(a) and (b), except that it may be printed or duplicated on one side of the sheet.

### **Rule 57. Record on appeal; transmission of record.**



- (a) The record on appeal shall include the legal file, any exhibits admitted as evidence, and any transcripts.
- (b) The record shall be transmitted by the juvenile court clerk to the clerk of the Court of Appeals upon completion of the transcript or, if there is no transcript, within 20 days after the filing of the notice of appeal.

**Rule 58. Ruling.**

- (a) After reviewing the petition on appeal, any response, and the record, the Court of Appeals may rule by opinion, memorandum decision, or order. The Court of Appeals may issue a decision or may set the case for full briefing under [Rule 24](#). The Court of Appeals may order an expedited briefing schedule and specify which issues shall be briefed.
- ~~(b) If the Court of Appeals sets the case for briefing under [Rule 24](#) and the petitioner has appointed counsel, the Court of Appeals will remand to the juvenile court to appoint appellate counsel pursuant to [Rule 11-401](#) of the Utah Code of Judicial Administration.~~
- (c) If the Court of Appeals affirms, reverses, or remands the juvenile court order, judgment, or decree, further review pursuant to [Rule 35](#) may be sought, but refusal to grant full briefing shall not be a ground for such further review.

**Rule 59. Extensions of Time.**

No change.

# Tab 3

Statewide Office and need to amend 11-401:

The legislature created a statewide indigent defense office that will handle most criminal appeals. This Committee will continue using the roster for certain excluded counties, aggravated murder, and child welfare/term of parental rights, etc. (see attached bill).

To that end, we need to update Rule 11-401 to reflect the new office. The new statute took effect July 1, 2020 so the committee should take expedited action on this.

**Rule 11-401. Standing Committee on Appellate Representation and the Appellate Roster****Intent:**

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

To establish uniform terms and a 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,” and “Indigent Appellate Defense Division” are defined in [Utah Code Sections 78B-22-102 and -802](#).

For purposes of this rule, “indigent defense service provider entity” means a legal defender office that is under contract to perform indigent defense services for one or more counties in the state; “indigent defense service provider attorney” means an attorney who has been appointed to the Appellate Roster; and “Appellate Roster” means the list of indigent service provider attorneys who are eligible for appointment to represent indigent individuals on appeal to the Utah Supreme Court and the Utah Court of Appeals.

**Applicability:**

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

**Statement of the Rule:**

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

**(A1) Composition.** The Committee ~~shall~~ consists of one attorney from the Office of General Counsel of the Administrative Office of the Courts; one attorney from the

29 Criminal Appeals Division of the Utah Attorney General's Office; one active or retired  
30 trial court judge from either a district or juvenile court in the state; one active or retired  
31 appellate court judge; one private civil appellate attorney; two criminal defense appellate  
32 attorneys: at least one of whom is currently practicing in the area of indigent criminal  
33 appeals for an indigent defense provider entity; one attorney practicing in the area of  
34 juvenile delinquency defense appeals; one attorney practicing in the area of child welfare  
35 proceedings as defined in [Rule 1\(f\)](#) of the Utah Rules of Appellate Procedure; and one  
36 attorney practicing in the area of termination of parental rights proceedings under [Section](#)  
37 [78B-6-112](#). The Director or designee of the Indigent Defense Commission ~~shall be~~ is an  
38 ex-officio, non-voting member who ~~shall~~ does not participate in the ~~e~~Committee's  
39 recommendation of attorneys for the roster.

40 ~~(B2)~~ **Appointment.** Committee members ~~shall be~~ are appointed by the Supreme Court  
41 and serve staggered four-year terms. The Supreme Court ~~shall select~~s a chair from among  
42 the Committee's members. Judges who serve as members of the Committee generally  
43 ~~shall will~~ not be selected as chair. Committee members ~~shall~~ serve as officers of the court  
44 and not as representatives of any client, employer, or other organization or interest group.  
45 At the ~~first meeting of the~~ Committee's first meeting in any calendar year, and at every  
46 meeting at which a new Committee member of the Committee first attends, each  
47 Committee member ~~shall~~ briefly discloses the general nature of ~~his or her~~ their legal  
48 practice.

49 ~~(C3)~~ **Vacancies.** In the event of a ~~vacancy on the~~ Committee vacancy, the Supreme  
50 Court, after ~~consultation~~ ing with the Committee chair, ~~shall will~~ appoint a new  
51 Committee member from the same category as the prior Committee member to serve for  
52 the ~~remainder of the~~ remaining unexpired term.

53 ~~(D4)~~ **Absences.** ~~In the event that~~ If a Committee member fails to attend two consecutive  
54 Committee meetings, the chair may notify the Supreme Court of those absences and may  
55 request that the Supreme Court replace that Committee member.

56 ~~(E5)~~ **Administrative assistance.** The Administrative Office of the Courts ~~shall~~  
57 coordinates staff support to the Committee, including the ~~assistance of the~~ Office of  
58 General Counsel's assistance in research and drafting.

(2b) **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](#).—

(A1) **Purpose of the Committee.** The ~~purpose of the Committee's purpose shall be~~ to recommend to the Board of Appellate Court Judges attorneys for inclusion on an appellate roster of indigent defense service provider attorneys eligible for appointment by the courts of this state to represent indigent individuals on appeal before the Utah Supreme Court or the Utah Court of Appeals. Except as specified in paragraph (2b)(19) of ~~this rule~~, only attorneys on the Appellate Roster ~~shall be~~ eligible for such court appointments.

(B2) **Committee recommendations.** The Committee ~~shall consider~~ and recommends attorneys for inclusion on the Appellate Roster based on the eligibility criteria listed in paragraph (2b)(C3), together with any other factor bearing on an applicant's ethics, diligence, competency, abilities in briefing and oral advocacy, and willingness to fairly, efficiently, and effectively provide appellate representation to indigent individuals on appeal. The Committee ~~shall consider~~ issues such as quality of briefing, the applicant's frequency of inadequate briefing, summary dismissals, or involuntary dismissals, and the applicant's professionalism and civility. The Committee may also recommend ~~the removal of removing~~ an attorney from the Appellate Roster.

(C3) **Eligibility criteria.** To be considered for ~~inclusion on~~ the Appellate Roster, an applicant at a minimum ~~shall~~ must complete an application in a form provided by the Committee and:

(iA) 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;

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

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

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

(~~v~~E) certify that the attorney has not, within the ~~preceding~~past 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;

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

(~~vii~~G) submit at least two appellate briefs to the Committee with a certification that the applicant was primarily responsible for drafting the briefs;

(~~viii~~H) submit a petition ~~pursuant to~~under [Rule 55](#) of the Utah Rules of Appellate Procedure if the person is applying to be on the Appellate Roster for appeals from child welfare proceedings;

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

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

(~~D4~~) **Roster Selection.** The Board of Appellate Court Judges ~~shall~~will approve or disapprove the ~~recommendations of the Committee's~~ recommendations with respect to attorneys to be included on the Appellate Roster. Except as provided in paragraph (~~2b~~)(~~G7~~), the Board may not add to the roster an attorney who is not recommended by the Committee.

(~~E5~~) **Mentoring.** If an attorney is selected for the Appellate 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 (~~2b~~)(~~C3~~)(~~iA~~)—(~~vi~~F). A mentor must have briefed the merits in at least three appeals within the past three years or in 12 appeals total. The attorney subject to the mentoring requirement ~~shall~~must certify in each brief filed on behalf of an indigent individual that the attorney was directly supervised in

117 | drafting the brief by a mentor qualified under paragraphs (2b)(C3)(iA)—(viF). The  
118 | attorney is not required to name the mentor in their certification.

119 | ~~(F6)~~ **Removal.** The Board may at any time remove an attorney from the Appellate Roster  
120 | based on the attorney's qualifications, skills, experience, or prior performance in any  
121 | appellate court, or the attorney's failure to maintain eligibility under paragraph (2b)(H8).

122 | ~~(G7)~~ **Reconsideration of removal or non-reappointment.** An attorney who is removed  
123 | from the Appellate Roster before the end of the attorney's three-year appointment or who  
124 | is not reappointed to a subsequent term may petition for reconsideration ~~in the form of a~~  
125 | ~~letter submitted by~~ submitting a letter to the Standing Committee on Appellate  
126 | Representation. The letter ~~shall~~ must be submitted within ~~30~~ 28 days from the date of the  
127 | notice informing the attorney of the removal or non-reappointment. The Committee ~~shall~~  
128 | will review all materials relevant to the attorney's petition and recommend to the Board  
129 | of Appellate Court Judges whether the attorney's removal or non-reappointment should  
130 | be upheld. The Board of Appellate Court Judges ~~shall~~ will approve or disapprove the  
131 | ~~recommendations of the Committee's~~ recommendations.

132 | ~~(H8)~~ **~~Term of a~~ Appointment term and reapplication.**

133 |       ~~(iA)~~ An attorney's Appellate Roster appointment term is three years.

134 |       ~~(iiB)~~ To maintain eligibility for appointment to provide indigent defense services  
135 | on appeal, an attorney must reapply under the provisions of paragraph (2b)(C3)  
136 | by September 1 of the attorney's third year on the Appellate Roster. The attorney  
137 | must be recommended by the Committee and reappointed to the Appellate Roster  
138 | by the Board of Appellate Court Judges at the conclusion of the attorney's  
139 | appointment term.

140 | ~~(I9)~~ **Exemption.** Attorneys employed by an indigent defense service provider entity or  
141 | the Indigent Appellate Defense Division to provide indigent defense services on appeal  
142 | are exempt from the requirement to be included on the Appellate Roster. This exemption  
143 | does not apply to an indigent defense service provider attorney who has contracted with a  
144 | county in the attorney's individual capacity to provide indigent defense services on  
145 | appeal.

146 | (3c) **Annual Schedule.** The Committee ~~shall~~must meet at least annually and ~~shall~~must submit its  
147 | annual recommendations to the Board of Appellate Court Judges by December 31~~-each year~~. If  
148 | the Committee determines that additional recommendations should be submitted to the Board of  
149 | Appellate Court Judges, the Committee may call for additional applications at any time. The  
150 | Board of Appellate Court Judges ~~shall~~will at its next meeting thereafter approve or disapprove  
151 | the Committee's recommendations ~~of the Committee with respect to~~of attorneys to be included  
152 | on the Appellate Roster.

153 | (4d) **Contracts in effect before ~~adoption of this rule's~~ adoption.** An attorney who, before this  
154 | rule's adoption ~~of this rule~~, contracted with a government entity to represent indigent individuals  
155 | on appeal is subject to the provisions of [Rule 38B](#) of the Utah Rules of Appellate Procedure.  
156 | Upon the contract's termination, expiration, or renewal ~~of the contract~~, the attorney is subject to  
157 | ~~the provisions of this rule.~~

158 | ~~Effective October 8, 2019 pursuant to Rule 11-105(5)~~

159