

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

Draft Meeting Minutes  
August 26, 2020  
Via Webex

*Honorable Linda Jones, Presiding*

**Attendees:**

Judge Linda Jones, Chair  
Lisa Collins  
Joanna Landau  
Margaret Lindsay  
Monica Maio  
Alan Mouritsen  
Debra Nelson  
John Nielsen  
Ann Marie Taliaferro  
Fred Voros

**Staff:**

Nancy Sylvester, Associate General Counsel

**Guests:**

Kirstin Norman  
Adam Trupp

**1. Welcome and approval of November 7, 2019 minutes:** (Judge Linda Jones)  
Judge Linda Jones welcomed everyone to the meeting and requested a motion to approve the minutes. Ms. Nelson moved to approve them and Ms. Taliaferro seconded the motion. The motion carried.

**2. Child welfare rule amendments:** (Adam Trupp, Kirstin Norman, Margaret Lindsay)

The committee discussed proposed child welfare rule amendments with guests Adam Trupp and Kirstin Norman and committee member Margaret Lindsay. The primary concern addressed by the amendments is the lack of requirement that appellate counsel file child welfare petitions with the appellate courts. The amendments will be made to the Rules of Appellate Procedure, Rule 55(a) and (b) and will appointment of appellate counsel and word counts (petition should be 7,000 words or less, rather than 15 pages). The committee discussed IAC (ineffective assistance of counsel) claims and a recent Court of Appeals case that discusses remand with those claims.

The committee then discussed that appointment of appellate counsel would be immediate upon notice of appeal and that appellate counsel would need to enter an appearance. The Rules of Juvenile Procedure will also require amendments so that juvenile court knows to make the appointment of counsel. Ms. Norman noted that the best case law has developed out of a warm hand off from trial counsel to appellate counsel. Having mentoring from appellate counsel would also significantly help trial counsel. Ms. Collins noted that the records on appeal are being prepared faster, so the delay concerns that originally accompanied Rule 55 should be gone.

Judge Jones suggested adding the phrase "who has been approved" to Rule 55 here: "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 who has been approved pursuant to the requirements of Rule 11-401 of the Utah Code of Judicial Administration."

Judge Voros, Ret., observed that the rule change will cost counties money so the drafters should communicate with the counties ahead of time. He also observed that the Legislature would be interested in this issue and it would be helpful if it created a statewide office.

Ms. Taliaferro moved to recommend adoption of the changes as proposed. Judge Voros, Ret., amended the motion to say that as a logistical matter, this presents no concern to this committee. Ms. Taliaferro seconded the motion as amended. The motion carried.

### **3. Discussion of capital murder case appointment: (Debra Nelson)**

Ms. Nelson, who is the Chief Appellate Officer for the Indigent Defense Commission, reported that her office does not handle capital murder cases but that there is a fund that counties can opt into. Ms. Taliaferro is currently the only one in the state qualified to take these cases, so the IDC is drafting a sole source contract with her.

### **4. Setting deadlines:**

The committee set the following deadlines for its annual call for applicants for the Appellate Roster:

- Deadline for applications: September 25
- Teleconference to divide: September 30
- Review of applicants: October 21

### **5. Discussion of questions for study:**

The committee discussed the following study 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 guiding them in the appellate process.

Ms. Nelson said the answer is yes on all of the questions. Regarding question 1, her office has a statutory mandate to put on CLE's. They are free. Ms. Maio noted that her office, Ms. Norman's office, and UACDL also do these on the juvenile side. Committee members proposed amending 11-401 to add a CLE requirement.

The committee tabled the mentoring issue for now (question 3).

Regarding question 2, the committee discussed instances where an attorney's ability to issue-spot may be lacking. If someone is interested in a certain subject area, that attorney can work closely with another attorney in the area to get that experience before joining the roster. Nonetheless, observed committee members, talented attorneys may still be capable of the work in spite of a lack of experience in a certain area.

Committee members proposed the following amendment to Rule 11-401(G): "submit at least two appellate briefs, at least one of which is in the relevant subject matter area, to the Committee with a certification that the applicant was primarily responsible for drafting the briefs;"

## **6. Adjournment and next meeting:**

The meeting adjourned at 2:30 p.m. The next meeting will be held on September 30, 2020 via teleconference for purposes of dividing up the applicants for review.