



Utah Supreme Court's Standing Committee on Appellate Representation

AGENDA

Location: Webex
Date: October 21, 2020
Time: 1:00-4:00 p.m.

Action: Welcome and approve August 26, 2020 minutes					Email	Judge Linda Jones, Chair
Action: Amendments to 11-401 to incorporate Indigent Defense Office Amendments from SB 139 (2020) and other amendments, including CLE requirements					Tab 1	Judge Linda Jones, Nancy Sylvester, Debra Nelson
Discussion and recommendation vote:					Email	Judge Linda Jones, Chair Nancy Sylvester
Last name	First name	Rosters applying for	Applied before?	Committee member assigned to review		
██████	██████	Criminal	Yes	████████████████████		

			Criminal, TPR	No				
			Criminal, Juvenile Delinquency	No				
			Criminal, Juvenile Delinquency, Child Welfare	Yes				
Discussion and new assignments: Rolling admissions							Tab 2	Judge Linda Jones
Discussion: Old business/new business								

[Committee Website](#)

Committee Members:

Judge Linda Jones, Chair
Margaret Lindsay
Joanna Landau (ex officio)
Monica Maio
Alan S. Mouritsen
Debra Nelson
John Neilsen
Nancy Sylvester
Ann Marie Taliaferro
Judge J. Frederic Voros (Ret.)

Tab 1

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 consist of at least 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 attorney from
30 each roster area set forth in paragraph (2)(b), one active or retired judge from an appellate
31 court and one active or retired judge from a court of record, and the Chief Appellate
32 Officer or designee of the Indigent Defense Commission. ~~T~~one active or retired trial court
33 judge from either a district or juvenile court in the state; one active or retired appellate
34 court judge; one private civil appellate attorney; two criminal defense appellate attorneys;
35 at least one of whom is currently practicing in the area of indigent criminal appeals for an
36 indigent defense provider entity; one attorney practicing in the area of juvenile
37 delinquency defense appeals; one attorney practicing in the area of child welfare
38 proceedings as defined in Rule 1(f) of the Utah Rules of Appellate Procedure; and one
39 attorney practicing in the area of termination of parental rights proceedings under Section
40 ~~78B-6-112~~. The Director or designee of the Indigent Defense Commission ~~shall be~~ is an
41 ex-officio, non-voting member who ~~shall~~ does not participate in the ~~e~~Committee's
42 recommendation of attorneys for the roster.

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

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

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

(E5) **Administrative assistance.** The Administrative Office of the Courts shall coordinate staff support to the Committee, including the ~~assistance of the Office of~~ 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;

(~~ii~~B) be a member of the Utah Bar in good standing;

(~~iii~~C) 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, 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;

(~~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.

115 | ~~(E5)~~ **Mentoring.** If an attorney is selected for the Appellate Roster on the condition that
116 | the attorney have a mentor, then the attorney must select a mentor who meets the
117 | qualifications set forth in ~~this rule at~~ paragraphs ~~(2b)(C3)(iA)–(viF)~~. A mentor must
118 | have briefed the merits in at least three appeals within the past three years or in 12
119 | appeals total. The attorney subject to the mentoring requirement ~~shall~~ must certify in each
120 | brief filed on behalf of an indigent individual that the attorney was directly supervised in
121 | drafting the brief by a mentor qualified under paragraphs ~~(2b)(C3)(iA)–(viF)~~. The
122 | attorney is not required to name the mentor in their certification.

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

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

136 | ~~(H8)~~ **Term of a Appointment term, CLE requirement, and reapplication.**

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

138 | ~~(B)~~ During an attorney's Appellate Roster term, the attorney must complete at
139 | least 12 hours of continuing legal education on topics related to the attorney's
140 | Appellate Roster work.

141 | ~~(iiC)~~ To maintain eligibility for appointment to provide indigent defense services
142 | on appeal, an attorney must reapply under the provisions of paragraph ~~(2b)(C3)~~
143 | by September 1 of the attorney's third year on the Appellate Roster. The

attorney's application must include a certification that the attorney complied with paragraph (b)(8)(B). The attorney must be recommended by the Committee and reappointed to the Appellate Roster by the Board of Appellate Court Judges at the conclusion of the attorney's appointment term.

(19) Exemption. Attorneys employed by an indigent defense service provider entity or the Indigent Appellate Defense Division to provide indigent defense services on appeal are exempt from the requirement to be included on the Appellate Roster. This exemption does not apply to an ~~indigent defense service provider~~ attorney or an entity who has contracted with an indigent defense service provider ~~entity in the attorney's individual capacity~~ to provide indigent defense services on appeal.

(3c) Annual Schedule. The Committee ~~shall~~must meet at least annually and ~~shall~~must submit its annual recommendations to the Board of Appellate Court Judges by December 31 ~~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~~will at its next meeting thereafter approve or disapprove the Committee's recommendations ~~of the Committee with respect to~~of attorneys to be included on the Appellate Roster.

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

Tab 2



LOKKEN & ASSOCIATES, P.C.

Attorneys at Law

6740 South 1300 East, Suite 225
Cottonwood Heights, Utah 84121
Tel.(801) 359-8003
Fax (801) 359-0181

October 9, 2020

Utah Supreme Court
Attn: Standing Committee on Appellate Representation
450 S. State Street
Salt Lake City, UT 84111

Re: Inclusion on Appellate Roster as Exempt Provider

Dear Committee Members:

Lokken & Associates, P.C. is one of the contract providers for Salt Lake County's indigent defense system pursuant to Utah Code Ann. 78B-22-102. Similar to Salt Lake Legal Defenders, Utah Juvenile Defenders, and Utah County Public Defender Association, we are court appointed counsel in Child Welfare matters for indigent parents/guardians in the Third District Court. We are an experienced law firm and have provided these services, including appeals, in excess of 20 years.

The two other providers for Salt Lake County, Salt Lake Legal Defenders and Utah Juvenile Defenders, were both placed on the roster at its inception. Under Rule 11-401(2)(I), we are also an exempt contract indigent service provider. I am writing to request that we be included on the roster in a similar manner to the agencies listed above. We qualify under the rule, and it will be reassuring to Salt Lake County that all of its indigent defense system providers meet the exemption requirements.

For reference, [REDACTED] I am also including the letters from Salt Lake County. Salt Lake County has requested that we indicate our exemption prior to our contract renewal, and has asked that we respond by November 1, 2020.

Thank you for your attention to this matter. Please let me know if I need to provide any additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lisa B. Lokken", with a stylized, cursive script.

Lisa B. Lokken
LOKKEN & ASSOCIATES, P.C.

Attachments



Jennifer Wilson
Salt Lake County Mayor

**DEPARTMENT OF
HUMAN SERVICES**

Karen Crompton
Department Director

Beth Graham
Interim Associate Director

HUMAN SERVICES DIVISIONS

AGING SERVICES

BEHAVIORAL HEALTH SERVICES

CRIMINAL JUSTICE SERVICES

HEALTH DEPARTMENT

YOUTH SERVICES

USU EXTENSION

**SALT LAKE COUNTY
GOVERNMENT CENTER**

2001 South State St., Ste. N3200
Salt Lake City, UT 84190-2000
Phone (385) 468-7060
Fax (385) 468-7072
TTY: 7-1-1

Date: October 7, 2020

Karen Crompton, Director
Human Services Dept.
2001 S. State Street, N3-200
Salt Lake City, UT 84190

RE: Utah Code of Judicial Administration Rule 11-401

Dear Salt Lake County Parental Defense Services Providers:

As an indigent defense service provider of Salt Lake County, you are required to capable of participating in all stages of court proceedings including appeals and the appeals process. In October 2019, the Utah Code of Judicial Administration was updated with [Rule 11-401](#) which established a standing committee to assist the Board of Appellate Court Judges in assembling 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.

The rule further provides that attorneys who, before the adoption of Rule 11-401, contracted with a government entity to represent indigent individuals on appeal are subject to the provisions of [Rule 38B](#) of the Utah Rules of Appellate Procedure. However, upon termination, expiration, or renewal of the applicable contract, the attorney will become subject to the provisions of Rule 11-401.

The effective date of your contract expires December 31, 2020. Salt Lake County intends to renew the contract under the existing terms and conditions. Therefore, it is essential that before the renewal of your contract with Salt Lake County you must either meet the eligibility requirements of Rule 11-401 and be listed on the applicable "roster" of qualified indigent defense attorneys or qualify under the exemption criteria of Rule 11-401(2)(I).

Please respond by **October 15, 2020** indicating your ability to comply with the terms of your current contract and the eligibility requirements or exemption of Rule 11-401 to my Department Fiscal Administrator Yanping Ding via her email YDing@slco.org.

Sincerely,

Karen G.
Crompton

Digitally signed by Karen G.
Crompton
Date: 2020.10.07 14:28:32 -06'00'

Karen Crompton
Human Services Dept Director



Jennifer Wilson
Salt Lake County Mayor

**DEPARTMENT OF
HUMAN SERVICES**

Karen Crompton
Department Director

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Interim Associate Director

HUMAN SERVICES DIVISIONS

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YOUTH SERVICES

USU EXTENSION

Date: October 9, 2020

Karen G. Crompton, Director
Human Services Dept.
2001 S. State Street, N3-200
Salt Lake City, UT 84190

RE: Utah Code of Judicial Administration Rule 11-401

Dear Salt Lake County Parental Defense Services Providers:

Thank you for your prompt response to the letter that was sent to you on October 7, 2020.

In order for the County to determine the next step with the regard to this Rule and to align with the contract requirements, we are officially asking you to apply for the appellate attorney roster, either through the exemption or through your own qualifications.

We are asking you to submit your application to the commission by **November 1, 2020. Please notify Yanping with the date of your submission as soon as the application is submitted.**

If you have any further questions, please contact Yanping via YDing@slco.org or our legal counsel Liam Keogh via LKeogh@slco.org.

Thank you again for your immediate attention to this request.

Sincerely,

Karen Crompton

Digitally signed by Karen
Crompton
Date: 2020.10.09 09:44:13
-06'00'

Karen G. Crompton
Director of Human Services Department

**SALT LAKE COUNTY
GOVERNMENT CENTER**
2001 South State St., Ste. N3200
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