

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

Draft Meeting Minutes  
November 30, 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

**Guest:**

Adam Trupp

**1. Welcome and approval of August 25, 2020 minutes:** (Judge Linda Jones)

Judge Jones welcomed everyone to the meeting and asked for a motion on the August and October minutes. Ms. Taliaferro moved, and Mr. Nielsen seconded. The motion carried.

**2. Rule 11-401 (All)**

The committee, with input from Adam Trupp, discussed Rule 11-401 as follows:

The statutory exemption and rule exemption don't match. These days, the statute allows anyone to be exempt. There is a concern that those who don't make it on the roster could still contract with a county and represent individuals on appeal. The committee discussed as a placeholder sunseting the exemption and having everyone apply to be on the roster. Ms. Landau said this was not the intent of the Legislature or the IDC and a corporate formation can't be put into a statute. She agreed that it may make sense to have everyone go through the roster process. Line drawing gets sticky. The other issue is caseload. Caseload was a big issue identified in the 6th Amendment Report.

How do we identify someone who has too big of a case load? Paragraph 12(b) asks if people have time and support. To add to the application: What is the approximate number of your active case load? There are national standards to address what is too much. In the letter, attorneys

should be put on notice about caseload. But it is up to the attorney to turn an assignment down if they are too busy. Ms. Nelson said that in terms of the attorneys she supervises, if one is not meeting deadlines, she could step in. Ms. Nelson assigns criminal appellate attorneys to cases in counties of the 3rd through 6th size. Ms. Collins makes all other assignments from the roster or contracts.

Mr. Nielsen noted that not all caseloads are created equal. It just depends on the size. The better question is how much time they have to devote:

Judge Jones then asked about whether there is a statutory fix for the exemption issue. Ms. Landau noted that it only exists in the rule. The statute says county provides services by contracting with entity or individual. If the exemption is eliminated, there will be 9 applications to vet from current exempt providers.

But LDA and trial attorneys occasionally take an appellate case. Attorneys get experience by working with someone who has more experience. It makes sense for someone to work with a roster attorney. They wouldn't have to apply to be on the roster, but this dilemma could be resolved by putting the trial attorney's name second on brief. The Roster attorney goes first. Ms. Sylvester will update the FAQ with information about how to get experience.

Ms. Lindsay moved to sunset the exemption. Mr. Voros seconded. The motion failed.

Ms. Landau will talk with LDA about the exemption going away. Ms. Lindsay, Ms. Nelson, and Ms. Maio will all need to be added to the roster. Misdemeanor attorneys may need to be added to the roster. Can a non-roster attorney argue an appeal for an indigent client?

Judge Jones proposed studying this further rather than moving the exemption sunset forward. What are the unintended consequences? Perhaps leave exemption in place, let counties put in requirement about being on the roster. Eliminate this language that was added last meeting: "The exemption will sunset effective December 31, 2021."

Mr. Trupp said the committee should make a decision on the best approach to the exemption issue and then the counties will need to meet the requirements. Qualified attorneys on appeal should be the standard. Mr. Voros seconded that point. Ms. Lindsay noted that Rule 55 gets around this by requiring trial counsel to prepare the petition. There is resistance to change.

Mr. Trupp noted that a small group formed through the appellate rules committee to study Rule 55. They have met to talk about this. The challenge is hand off to qualified appellate counsel.

Judge Jones asked whether the exemption should only applies in certain case types.

Mr. Voros moved to study removing the exemption. Ms. Lindsay seconded. The motion passed.

Research was assigned to Ms. Landau, Ms. Nelson, and Ms. Lindsay.

**3. Discussion – Review applicant recommendations: (All)**

The committee reviewed, discussed, and voted on five applications for the Utah Appellate Roster. The committee's recommendations will go on to the Board for its decisions.

**4. Adjournment and next meeting:**

The committee adjourned at approximately 11:43 a.m. The next meeting will be held January 6, 2021 at 11 a.m. via Webex.