

1 **Supreme Court Rules of Professional Practice**

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3 **Chapter 11: General Provisions**

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5 **Article 4: Standing Committee on Appellate Representation**

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7 **Rule 11-401. Standing Committee on Appellate Representation**

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9 **Intent:**

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11 To establish a standing Committee to assist the Board of Appellate Court Judges to
12 determine a roster of attorneys eligible for appointment to represent indigent parties on
13 appeal to the Utah Supreme Court and the Utah Court of Appeals.

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

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17 To establish a schedule for recommending the appointment of attorneys to, or the
18 removal of attorneys from, the appellate roster.

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20 **Applicability:**

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

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26 **Statement of the Rule:**

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

30 (1)(A) *Composition.* The Committee shall consist of one member of the Office of
31 General Counsel of the Administrative Office of the Courts; one member from the
32 Criminal Appeals Division of the Utah Attorney General's Office; one active or retired
33 trial court judge from either a District or Juvenile court in the state; one active or retired
34 appellate court judge; one private civil appellate attorney; two criminal defense
35 appellate attorneys: at least one of whom is currently practicing in the area of indigent
36 criminal appeals in a legal defender's office, as defined by Utah Code § 77-32-201 (11);
37 one attorney practicing in the area of juvenile delinquency defense appeals; and one
38 attorney practicing in the area of child welfare defense appeals.

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

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

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

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

57 (2) Appellate Roster. The Board of Appellate Judges shall create and maintain an
58 appellate roster of attorneys skilled in handling criminal, juvenile delinquency, and
59 abuse, neglect and dependency appeals.

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

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

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

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

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

78 (iii) submit at least two appellate briefs to the Committee with a certification that
79 the applicant was primarily responsible for drafting the briefs;

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

82 (v) provide citations for all appellate decisions in which the applicant was counsel
83 of record; and

84 (vi) certify that the applicant has sufficient time and administrative support to
85 accept an appointment to represent indigent parties on appeal and to provide the
86 effective assistance of counsel in every case and a willingness to commit those resources
87 to that representation.

88 (2)(D) Roster Selection. The Board of Appellate Court Judges shall approve or
89 disapprove the recommendations of the Committee with respect to attorneys to be
90 included on the appellate roster. The Board may also at any time remove an attorney
91 from the appellate roster based on an attorney's qualifications, skills, experience, and
92 prior performance in the Utah appellate courts. The Board may not add to the roster an
93 attorney who was not recommended by the Committee.

94 (2)(E) Reconsideration. An attorney who submitted an application to the
95 Committee but was not chosen by the Board for inclusion on the appellate roster, or who
96 was removed from the roster, may file a petition for reconsideration in the form of a
97 letter submitted to the Board of Appellate Court Judges. The petitioner shall submit an
98 original letter and twelve copies.

99 (2)(F) Retention. To maintain eligibility, an attorney must be recommended by the
100 Committee and reappointed by the Board of Appellate Court Judges every two years.
101 An attorney desiring to maintain eligibility shall submit a renewal request to the
102 Committee by January 1 of the year in which the attorney reports his or her MCLE
103 compliance to the Utah State Bar; provided, however, that the first such request shall not
104 be due earlier than the first January 1 at least two years after the date on which the
105 attorney originally qualified to be on the roster. The renewal request shall include the
106 following:

107 (i) a certification that the attorney is a member of the Utah Bar in good standing;

108 (ii) a certification that the attorney has not, within the preceding three years, been
109 the subject of an order issued by either appellate court imposing sanctions against
110 counsel, discharging counsel, or taking other equivalent action against counsel because
111 of counsel's substandard performance before either appellate court;

112 (iii) a showing that the attorney has maintained competence in appellate practice,
113 which showing may be achieved by:

114 (a) submitting two appellate briefs filed with appellate courts during the
115 previous two years, together with a certification that the attorney was primarily
116 responsible for drafting the briefs;

117 (b) certification that the attorney has attended at least six hours of CLE
118 dealing with the area of appellate practice in which the attorney has accepted court-
119 appointments on appeal in the previous two years; or

120 (c) an equivalent demonstration of continued competence.

121 (2)(G) Exemption. Notwithstanding any other provision of this rule, any attorney
122 currently employed in a county or other regional "Legal defender's office" (under Utah
123 Code § 77-32-201 (12)), to provide court-appointed representation and defense resources
124 on appeal, shall be independently eligible for appointment to represent indigent parties
125 on appeal.

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

129 (3) Annual Schedule. The Committee shall meet at least annually and shall submit
130 its recommendations to the Board of Appellate Court Judges by February 1 of each year.
131 The Board of Appellate Court Judges shall at its next meeting thereafter approve or
132 disapprove the recommendations of the Committee with respect to attorneys to be
133 included on the appellate roster.