

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

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

To establish uniform terms and a ~~uniform~~ 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 ~~a~~ Appellate ~~R~~oster.

Definitions:

The terms “indigent defense service provider,” “indigent individual,” and “indigent defense services” are defined in Utah Code Section 78B-22-102.

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 to the internal operation of the Board of Appellate Court Judges and the Committee on Appellate Representation and to ~~district and appellate courts of record in indigent criminal cases, juvenile delinquency, and child welfare proceedings~~ cases involving indigent individuals.

Statement of the Rule:

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

(1)(A) **Composition.** The Committee shall consist of one ~~member attorney from~~ the Office of General Counsel of the Administrative Office of the Courts; one ~~member attorney~~ from the Criminal Appeals Division of the Utah Attorney General’s Office; one active or retired trial court judge from either a ~~District~~ district or ~~Juvenile~~ juvenile court in the state; one active or retired appellate court judge; one private civil appellate attorney; two criminal defense appellate attorneys: at least one of whom is currently practicing in the area of indigent criminal appeals ~~in for an indigent defense provider entity~~ a legal defender’s office, under Utah Code § 77-32-302(2)(a) or (2)(b); one attorney practicing in the area of juvenile delinquency defense appeals; and one attorney practicing in the area of child welfare proceedings as defined in Rule 1(f) of the Utah Rules of Appellate Procedure; and one attorney practicing in the area of termination of parental rights proceedings under Section 78B-6-112 ~~child welfare defense appeals.~~ The Director or designee of the Indigent Defense Commission shall be an ex-officio, non-voting member who shall not participate in the committee’s recommendation of attorneys for the roster.

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

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

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

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

56 | (2) **Appellate Roster.** The Board of Appellate Judges shall create and maintain an appellate roster of
57 | indigent service provider attorneys skilled in handling criminal, juvenile delinquency, and child welfare
58 | proceedings as defined in Rule 1(f) of the Utah Rules of Appellate Procedure, and termination of parental
59 | rights proceedings under Section 78B-6-112. abuse, neglect and dependency appeals.

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

66 | (2)(B) **Committee recommendations.** The Committee shall consider and recommend attorneys
67 | for inclusion on the ~~a~~Appellate Roster based on the eligibility criteria listed in ~~subsection paragraph~~
68 | (2)(C) together with any other factor bearing on an applicant's ethics, diligence, competency, abilities
69 | in briefing and oral advocacy, and willingness to fairly, efficiently, and effectively provide appellate
70 | representation to indigent ~~parties individuals~~ on appeal. The Committee shall consider issues such as
71 | quality of briefing, the applicant's frequency of inadequate briefing, summary dismissals, or
72 | involuntary dismissals, and the applicant's professionalism and civility. The Committee may also
73 | recommend the removal of an attorney from the Appellate Roster.

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

76 (2)(C)(i) demonstrate that the applicant has briefed the merits in at least three appeals within
77 the past three years or in 12 appeals total, or is directly supervised by an attorney with that
78 experience;

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

81 (2)(C)(ii) be a member of the Utah Bar in good standing;

82 ~~(2)(C)(iii) submit at least two appellate briefs to the Committee with a certification that the~~
83 ~~applicant was substantially responsible for drafting the briefs;~~ (2)(C)(iiiv) demonstrate knowledge
84 of appellate practice as shown by experience, training, or legal education;

85 (2)(C)(iv) demonstrate ability to adequately and effectively raise and argue issues on appeal
86 and comply with applicable court rules;

87 (2)(C)(v) certify that the attorney has not, within the preceding three years, been the subject
88 of an order issued by any appellate court imposing sanctions against counsel, discharging
89 counsel, or taking other equivalent action against counsel because of counsel's substandard
90 performance before an appellate court;

91 (2)(C)(vi) not have been removed from the Appellate Roster within the past year;

92 (2)(C)(iiivii) submit at least two appellate briefs to the Committee with a certification that the
93 applicant was substantially primarily responsible for drafting the briefs;

94 (2)(C)(viii) submit a petition pursuant to Rule 55 of the Utah Rules of Appellate Procedure if
95 the person is applying to be on the Appellate Roster for appeals from child welfare proceedings;

96 ~~(2)(C)(iv) demonstrate knowledge of appellate practice as shown by experience, training, or~~
97 ~~legal education;~~

98 (2)(C)(ixv) provide citations for all appellate decisions in which the applicant was counsel of
99 record; and

100 ~~(2)(C)(2)(C)(vix)~~ certify that the applicant has sufficient time and administrative support to
101 accept an appointment to represent provide indigent defense services for indigent parties
102 individuals on appeal and to provide the effective assistance of counsel in every case and a
103 willingness to commit those resources to that representation.

104 **(2)(D) Roster Selection.** The Board of Appellate Court Judges shall approve or disapprove the
105 recommendations of the Committee with respect to attorneys to be included on the Appellate
106 Roster. Except as provided in paragraph (2)(G), the Board may not add to the roster an attorney who
107 is not recommended by the Committee.

108 **(2)(E) Mentoring.** If an attorney is selected for the Appellate Roster on the condition that the
109 attorney have a mentor, then the attorney must select a mentor who meets the qualifications set forth
110 in this rule at paragraphs (2)(C)(i)-(vi). A mentor must have briefed the merits in at least three appeals
111 within the past three years or in 12 appeals total. The attorney subject to the mentoring requirement
112 shall certify in each brief filed on behalf of an indigent individual that the attorney was directly

113 supervised in drafting the brief by a mentor qualified under paragraphs (2)(C)(i)-(vi). The attorney is
 114 not required to name the mentor in their certification.

115 ~~(2)(FE)~~ **Removal.** The Board may also at any time remove an attorney from the aAppellate
 116 rRoster based on an the attorney's qualifications, skills, experience, and or prior performance in the
 117 any Utah appellate courts, or the attorney's failure to maintain eligibility under paragraph (2)(H). The
 118 Board may not add to the roster an attorney who was not recommended by the Committee.

119 ~~(2)(EGF)~~ **Reconsideration of removal or non-reappointment.**

120 An attorney who submitted an application to the Committee but was not chosen by the Board for
 121 inclusion on the appellate roster, or An attorney who was is removed from the Appellate rRoster
 122 before the end of the attorney's three-year appointment or who is not reappointed to a subsequent
 123 term, may file a petition for reconsideration in the form of a letter submitted to the Standing
 124 Committee on Appellate Representation the Board of Appellate Court Judges. The letter shall be
 125 submitted within 30 days from the date of the notice informing the attorney of the removal or non-
 126 reappointment. The Committee shall review all materials relevant to the attorney's petition and
 127 recommend to the Board of Appellate Court Judges whether the attorney's removal or non-
 128 reappointment should be upheld. The Board of Appellate Court Judges shall approve or disapprove
 129 the recommendations of the Committee. The petitioner shall submit an original letter and twelve
 130 copies.

131 ~~(2)(FHG)~~ **Retention Term of appointment and reapplication.**

132 (2)(H)(i) An attorney's Appellate Roster appointment term is three years.

133 (2)(H)(ii) To maintain eligibility for appointment to provide indigent defense services on
 134 appeal, an attorney must reapply under the provisions of paragraph (2)(C) by September 1 of the
 135 attorney's third year on the Appellate Roster. To maintain eligibility, an The attorney must be
 136 recommended by the Committee and reappointed to the Appellate Roster by the Board of
 137 Appellate Court Judges at the conclusion of the attorney's appointment term, every two years. An
 138 attorney desiring to maintain eligibility shall submit a renewal request to the Committee by
 139 January 1 of the year in which the attorney reports his or her MCLE compliance to the Utah State
 140 Bar; provided, however, that the first such request shall not be due earlier than the first January 1
 141 at least two years after the date on which the attorney originally qualified to be on the roster. The
 142 renewal request shall include the following:

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

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

148 (2)(F)(iii) a showing that the attorney has maintained competence in appellate practice, which
 149 showing may be achieved by:

150 ~~(2)(F)(iii)(a) submitting two appellate briefs filed with appellate courts during the previous two~~
151 ~~years, together with a certification that the attorney was substantially responsible for drafting the~~
152 ~~briefs;~~

153 ~~(2)(F)(iii)(b) certification that the attorney has attended at least six hours of CLE dealing with~~
154 ~~the area of appellate practice in which the attorney has accepted court appointments on appeal in~~
155 ~~the previous two years; or~~

156 ~~(2)(F)(iii)(c) an equivalent demonstration of continued competence.~~

157 ~~(2)(G)(H) **Exemption.** Attorneys employed by an indigent defense service provider entity~~

158 ~~Notwithstanding any other provision of this rule, any attorney currently employed in a county or other~~
159 ~~regional legal defender's office, under Utah Code § 77-32-302(2)(a) or (2)(b), to provide court-~~
160 ~~appointed representation and defense resources~~indigent defense services on appeal; shall ~~are~~be
161 independently eligible for appointment exempt from the requirement to be included on the Appellate
162 Roster to represent indigent parties ~~individuals~~ on appeal. This paragraph exemption does not apply
163 to an indigent defense services provider attorney who has contracted with a county in the attorney's
164 individual capacity to provide ~~court-appointed representation and defense resources~~indigent defense
165 services on appeal.

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

168 ~~(3) **Annual Schedule.** The Committee shall meet at least annually and shall submit its~~
169 ~~recommendations to the Board of Appellate Court Judges by February ~~December 31~~ of each year. ~~If the~~~~
170 ~~Committee determines that additional recommendations should be submitted to the Board of Appellate~~
171 ~~Court Judges, the Committee may call for additional applications at any time. The Board of Appellate~~
172 ~~Court Judges shall at its next meeting thereafter approve or disapprove the recommendations of the~~
173 ~~Committee with respect to attorneys to be included on the aAppellate ~~R~~Roster.~~

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

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