

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

2 **Intent:**

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

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

7 To establish a schedule for recommending the appointment of indigent defense service provider
8 attorneys to, or the removal of indigent defense service provider attorneys from, the Appellate
9 Roster.

10 **Definitions:**

11 The terms “indigent defense service provider,” “indigent individual,” ~~and~~ “indigent defense
12 services,” and “Indigent Appellate Defense Division” are defined in [Utah Code Sections 78B-22-](#)
13 [102](#) and [-802](#).

14 For purposes of this rule; ~~an~~

15 (1) “indigent appellate defense service provider entity” means a legal defender office that is
16 under contract to perform indigent defense services for one or more counties in the state and has
17 a designated appellate division consisting of one or more attorneys who are employed by the
18 legal defender office and whose primary focus is appellate representation. “Employed by” does
19 not include an attorney who contracts separately with an indigent appellate defense service
20 provider entity;

21 (2) “indigent defense service provider attorney” means an individual attorney who has been
22 appointed to the Appellate Roster; and

23 (3) “Appellate Roster” means the list of indigent service provider attorneys who are eligible for
24 appointment to represent indigent individuals on appeal to the Utah Supreme Court and the Utah
25 Court of Appeals.

26 **Applicability:**

27 | This rule ~~shall apply~~applies to the internal operation of the Board of Appellate Court Judges and
28 | the Committee on Appellate Representation and to courts of record in cases involving indigent
29 | individuals.

30 | **Statement of the Rule:**

31 | ~~(4a)~~ **Committee Establishment**. The Standing Committee on Appellate Representation is
32 | ~~hereby~~ established as a committee of the Board of Appellate Court Judges.

33 | **(A1) Composition**. The Committee ~~shall consist~~s of at least one attorney from the Office of
34 | ~~General Counsel of the Administrative Office of the Courts;~~ one attorney from the Criminal
35 | Appeals Division of the Utah Attorney General's Office; one attorney from each roster area
36 | set forth in paragraph (2)(b), one active or retired judge from an appellate court and one
37 | active or retired judge from another court of record, and the Chief Appellate Officer or
38 | designee of the Indigent Defense Commission. ~~one active or retired trial court judge from~~
39 | ~~either a district or juvenile court in the state; one active or retired appellate court judge; one~~
40 | ~~private civil appellate attorney; two criminal defense appellate attorneys; at least one of~~
41 | ~~whom is currently practicing in the area of indigent criminal appeals for an indigent defense~~
42 | ~~provider entity; one attorney practicing in the area of juvenile delinquency defense appeals;~~
43 | ~~one attorney practicing in the area of child welfare proceedings as defined in Rule 1(f) of the~~
44 | ~~Utah Rules of Appellate Procedure; and one attorney practicing in the area of termination of~~
45 | ~~parental rights proceedings under Section 78B-6-112. The Director or designee of the~~
46 | ~~Indigent Defense Commission shall be~~s an ex officio, non voting member who shall does
47 | ~~not participate in the c~~ommittee's recommendation of attorneys for the roster.

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

56 | ~~(C3)~~ **Vacancies.** In the event of a ~~vacancy on the Committee~~ vacancy, the Supreme Court,
57 | after ~~consultation~~ consulting with the Committee chair, ~~shall~~ will appoint a new Committee member
58 | from the same category as the prior Committee member to serve for the ~~remainder of~~
59 | ~~the~~ remaining unexpired term.

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

63 | ~~(E5)~~ **Administrative assistance.** The Administrative Office of the Courts ~~shall~~ will
64 | coordinate staff support to the Committee, including the ~~assistance of the~~ Office of General
65 | Counsel's assistance in research and drafting.

66 | ~~(2b)~~ **Appellate Roster.** The Board of Appellate Judges ~~shall create and maintains~~ an appellate
67 | roster of indigent service provider attorneys skilled in handling criminal, juvenile delinquency,
68 | and child welfare proceedings as defined in Rule 1(f) of the Utah Rules of Appellate Procedure,
69 | and termination of parental rights proceedings under Section 78B-6-112.

70 | ~~(A1)~~ **Purpose of the Committee.** The ~~purpose of the Committee's~~ purpose ~~shall be~~ is to
71 | recommend to the Board of Appellate Court Judges attorneys for inclusion on an appellate
72 | roster of indigent defense service provider attorneys eligible for appointment by the courts of
73 | this state to represent indigent individuals on appeal before the Utah Supreme Court or the
74 | Utah Court of Appeals. Except as specified in paragraph ~~(2b)(19) of this rule,~~ only attorneys
75 | on the Appellate Roster ~~shall be~~ are eligible for such court appointments.

76 | ~~(B2)~~ **Committee recommendations.** The Committee ~~shall~~ will consider and recommend
77 | attorneys for inclusion on the Appellate Roster based on the eligibility criteria listed in
78 | paragraph ~~(2b)(C3),~~ together with any other factor bearing on an applicant's ethics, diligence,
79 | competency, abilities in briefing and oral advocacy, and willingness to fairly, efficiently, and
80 | effectively provide appellate representation to indigent individuals on appeal. The Committee
81 | ~~shall~~ will consider issues such as quality of briefing, the applicant's frequency of inadequate
82 | briefing, summary dismissals, or involuntary dismissals, and the applicant's professionalism
83 | and civility. The Committee may also recommend ~~the removal of~~ removing an attorney from
84 | the Appellate Roster.

85 | (~~3~~) **Eligibility criteria.** To be considered for ~~inclusion on~~ the Appellate Roster, an applicant
86 | must at a minimum ~~shall~~ complete an application in a form provided by the Committee and:

87 | (i~~A~~) demonstrate that the applicant has briefed the merits in at least three appeals within
88 | the past three years or in 12 appeals total, or is directly supervised by an attorney with
89 | that experience;

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

91 | (iii~~C~~) demonstrate knowledge of appellate practice as shown by experience, training, or
92 | legal education;

93 | (iv~~D~~) demonstrate ability to adequately and effectively raise and argue issues on appeal
94 | and comply with applicable court rules;

95 | (v~~E~~) certify that the attorney has not, within the ~~preceding~~past three years, been the
96 | subject of an order issued by any appellate court imposing sanctions against counsel,
97 | discharging counsel, or taking other equivalent action against counsel because of
98 | counsel's substandard performance before an appellate court;

99 | (vi~~F~~) must not have been removed from the Appellate Roster within the past year;

100 | (vii~~G~~) submit at least two appellate briefs, at least one of which is in the relevant subject
101 | matter area, to the Committee with a certification that the applicant was primarily
102 | responsible for drafting the briefs;

103 | (viii~~H~~) submit a petition ~~pursuant to~~ under [Rule 55](#) of the Utah Rules of Appellate
104 | Procedure if the person is applying to be on the Appellate Roster for appeals from child
105 | welfare proceedings;

106 | (ix~~I~~) provide citations for all appellate decisions in which the applicant was counsel of
107 | record; and

108 | (x~~J~~) certify that the applicant has sufficient time and administrative support to accept an
109 | appointment to provide indigent defense services for indigent individuals on appeal and
110 | to provide the effective assistance of counsel in every case and a willingness to commit
111 | those resources to that representation.

112 | ~~(D4)~~ **Roster Selection.** The Board of Appellate Court Judges ~~shall~~will approve or
113 | disapprove the ~~recommendations of the Committee's~~ recommendations with respect to
114 | attorneys to be included on the Appellate Roster. Except as provided in paragraph ~~(2b)(G7)~~,
115 | the Board may not add to the roster an attorney who is not recommended by the Committee.

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

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

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

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

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

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

141 Roster work. The attorney must certify completion of the hours at the time of
142 reapplication and provide documentation of the hours and topics completed.

143 ~~(#C)~~ To maintain eligibility for appointment to provide indigent defense services on
144 appeal, an attorney must reapply under the provisions of paragraph ~~(2b)~~~~(C3)~~ by
145 September 1 of the attorney's third year on the Appellate Roster. The attorney must be
146 recommended by the Committee and reappointed to the Appellate Roster by the Board of
147 Appellate Court Judges at the conclusion of the attorney's appointment term.

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

154 **(A) Requirements for entity exempt status.** In order to qualify for exempt status, an
155 indigent appellate defense service provider entity or the Indigent Appellate Defense
156 Division must certify in writing every five years to the Appellate Representation
157 Committee that the entity has :

158 (i) an appellate division whose primary focus is appellate representation;

159 (ii) a case management tracking system;

160 (iii) adequate administrative support;

161 (iv) one or more supervising attorneys who are on the appellate roster; and

162 (v) oversight and supervision of attorneys who handle appellate cases.

163 **(B) Inclusion in an entity's exemption.** To be included in an entity's exemption, an
164 attorney must be employed by the indigent appellate defense service provider entity.
165 Independent contractors do not qualify under an indigent appellate defense service
166 provider entity's exemption.

167 ~~(3c)~~ **Annual Schedule.** The Committee ~~shall~~must meet at least annually and ~~shall~~must submit
168 its annual recommendations to the Board of Appellate Court Judges by December 31 ~~each year.~~

169 If the Committee determines that additional recommendations should be submitted to the Board
170 of Appellate Court Judges, the Committee may call for additional applications at any time. The
171 Board of Appellate Court Judges ~~shall~~will at its next meeting thereafter approve or disapprove
172 the Committee's recommendations ~~of the Committee with respect to~~of attorneys to be included
173 on the Appellate Roster.

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