

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

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3 Intent:

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

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

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

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14 Applicability:

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

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20 Statement of the Rule:

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

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

32 (1)(B) Appointment. Committee members shall be appointed by the Supreme
33 Court and shall serve staggered four-year terms. The Supreme Court shall select a chair
34 from among the Committee's members. Judges who serve as members of the Committee
35 generally shall not be selected as chair. Committee members shall serve as officers of the
36 court and not as representatives of any client, employer, or other organization or interest
37 group. At the first meeting of the Committee in any calendar year, and at every meeting
38 at which a new member of the Committee first attends, each Committee member shall

39 briefly disclose the general nature of his or her legal practice.

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

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

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

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

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

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

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

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

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

71 (iii) submit at least two appellate briefs to the Committee with a certification that
72 the applicant was substantially responsible for drafting the briefs;

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

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

77 (vi) certify that the applicant has sufficient time and administrative support to
78 accept an appointment to represent indigent parties on appeal and to provide the

79 effective assistance of counsel in every case and a willingness to commit those resources
80 to that representation.

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

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

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

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

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

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

107 (a) submitting two appellate briefs filed with appellate courts during the
108 previous two years, together with a certification that the attorney was substantially
109 responsible for drafting the briefs;

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

113 (c) an equivalent demonstration of continued competence.

114 (2)(G) Exemption. Notwithstanding any other provision of this rule, any attorney
115 currently employed in a county or other regional “Legal defender’s office” (under Utah
116 Code § 77-32-201 (12)), to provide court-appointed representation and defense resources
117 on appeal, shall be independently eligible for appointment to represent indigent parties
118 on appeal.

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

122 (3) *Annual Schedule.* The Committee shall meet at least annually and shall submit
123 its recommendations to the Board of Appellate Court Judges by February 1 of each year.
124 The Board of Appellate Court Judges shall at its next meeting thereafter approve or
125 disapprove the recommendations of the Committee with respect to attorneys to be
126 included on the appellate roster.

Effective May 1, 2018