

Rule 3-201. Court commissioners.

1 **Intent:**

2 To define the role of court commissioner.

3 To establish a term of office for court commissioners.

4 To establish uniform administrative policies governing the qualifications, appointment, supervision,
5 discipline and removal of court commissioners.

6 To establish uniform administrative policies governing the salaries, benefits and privileges of the office of
7 court commissioner.

8 **Applicability:**

9 This rule shall apply to all trial courts of record.

10 **Statement of the Rule:**

11 (1) **Definition.** Court commissioners are quasi-judicial officers established by the Utah Code.

12 (2) **Qualifications.**

13 (2)(A) Court commissioners must be at least 25 years of age, United States citizens, Utah residents
14 for three years preceding appointment and residents of Utah while serving as commissioners. A court
15 commissioner shall reside in a judicial district the commissioner serves.

16 (2)(B) Court commissioners must be admitted to practice law in Utah and exhibit good character.
17 Court commissioners must possess ability and experience in the areas of law in which the court
18 commissioner serves.

19 (2)(C) Court commissioners shall serve full time and shall comply with Utah Code Section 78A-2-221.

20 (3) **Appointment - Oath of office.**

21 (3)(A) Selection of court commissioners shall be based solely upon consideration of fitness for office.

22 (3)(B) When a vacancy occurs or is about to occur in the office of a court commissioner, the Council
23 shall determine whether to fill the vacancy. The Council may determine that the court commissioner will
24 serve more than one judicial district.

25 (3)(C) A committee for the purpose of nominating candidates for the position of court commissioner
26 shall consist of ~~one judge~~ the presiding judge or designee from each court level and judicial district that
27 the commissioner will serve, three lawyers, and two members of the public. Committee members shall be
28 appointed by the presiding judge of the district court of each judicial district. The committee members
29 shall serve three year terms, staggered so that not more than one term of a member of the bench, bar, or
30 public expires during the same calendar year. The presiding judge shall designate a chair of the
31 committee. All members of the committee shall reside in the judicial district. All members of the committee
32 shall be voting members. A quorum of one-half the committee members is necessary for the committee to
33 act. The committee shall act by the concurrence of a majority of the members voting. When voting upon
34 the qualifications of a candidate, the committee shall follow the ~~voting~~ procedures of the judicial

35 ~~nominating commissions established in the commissioner nominating manual.~~

36 (3)(D) If the commissioner will serve more than one judicial district, the presiding judges of the
37 districts involved shall select representatives from each district's nominating committee to form a joint
38 nominating committee with a size and composition equivalent to that of a district committee, except that a
39 maximum of two judges from each district shall serve on the joint nominating committee.

40 (3)(E) No member of the committee may vote upon the qualifications of any candidate who is the
41 spouse of that committee member or is related to that committee member within the third degree of
42 relationship. No member of the committee may vote upon the qualifications of a candidate who is
43 associated with that committee member in the practice of law. The committee member shall declare to the
44 committee any other potential conflict of interest between that member and any candidate as soon as the
45 member becomes aware of the potential conflict of interest. The committee shall determine whether the
46 potential conflict of interest will preclude the member from voting upon the qualifications of any candidate.
47 The committee shall record all declarations of potential conflicts of interest and the decision of the
48 committee upon the issue.

49 (3)(F) The administrative office of the courts shall advertise for qualified applicants and shall remove
50 from consideration those applicants who do not meet minimum qualifications of age, citizenship,
51 residency, and admission to the practice of law. The administrative office of the courts shall develop
52 uniform guidelines for the application process for court commissioners.

53 (3)(G) The nominating committee shall review the applications of qualified applicants and may
54 investigate the qualifications of applicants to its satisfaction. The committee shall interview selected
55 applicants and select the three best qualified candidates. All voting shall be by confidential ballot. The
56 committee shall receive public comment on those candidates as provided in paragraph (4). Any
57 candidate may be reconsidered upon motion by a committee member and upon agreement by a majority
58 of nominating committee members.

59 (3)(H) When the public comment period as provided in paragraph (4) has closed, the comments shall
60 ~~be given~~ to the nominating committee. If any comments would negatively affect the committee's
61 decision on whether to recommend a candidate, the candidate shall be given ~~notice~~ all comments with the
62 commenters' names redacted and an opportunity to respond to the comments. If the committee decides
63 not to recommend a candidate based on the comments, the committee shall select another candidate
64 from the interviewed applicants and again receive public comment on the candidates as provided in
65 paragraph (4).

66 (3)(I) The chair of the nominating committee shall present the names, applications, and the results of
67 background investigations of the nominees to the judges of the courts the court commissioner will serve.
68 The committee may indicate its order of preference.

69 (3)(J) The judges of ~~the each~~ courts level the court commissioner will serve shall together select one
70 of the nominees by a concurrence of a majority of judges voting. If the commissioner will serve more than

71 one judicial district, ~~the~~ concurrence of ~~each court independent of the others~~ a majority of judges in each
72 district is necessary for selection.

73 (3)(K) The presiding judge of the district ~~court of the district~~ the court commissioner will primarily
74 serve shall present the name of the selected candidate to the Council. The selection shall be final upon
75 the concurrence of two-thirds of the members of the Council. The Council shall vote upon the selection
76 within 45 days of the selection or the concurrence of the Council shall be deemed granted.

77 (3)(L) If the Council does not concur in the selection, the judges of the district may select another of
78 the nominees or a new nominating process will be commenced.

79 (3)(M) The appointment shall be effective upon the court commissioner taking and subscribing to the
80 oath of office required by the Utah Constitution and taking any other steps necessary to qualify for office.
81 The court commissioner shall qualify for office within 45 days after the concurrence by the Council.

82 (4) **Public comment for appointment and retention.**

83 (4)(A) Final candidates for appointment and court commissioners who are up for retention shall be
84 subject to public comment.

85 (4)(B) For final candidates, the nominating committee shall be responsible for giving notice of the
86 public comment period.

87 (4)(C) For court commissioners, the district in which the commissioner serves shall be responsible for
88 giving notice of the public comment period.

89 (4)(D) The nominating committee or district in which the commissioner serves shall:

90 (i) email notice to each active member of the Utah State Bar including the names of the nominees
91 or court commissioner with instructions on how to submit comments;

92 (ii) ~~publish issue a press release and other public notices listing~~ the names of the nominees or
93 court commissioner with instructions on how to submit comments ~~in a newspaper of general~~
94 ~~circulation~~; and

95 (iii) allow at least 10 days for public comment.

96 (4)(E) Individuals who comment on the nominees or commissioners should be encouraged, but not
97 required, to provide their names and contact information.

98 (4)(F) The comments are classified as protected court records and shall not be made available to the
99 public.

100 (5) **Term of office.** The court commissioner shall be appointed until December 31 of the third year
101 following concurrence by the Council. At the conclusion of the first term of office and each subsequent
102 term, the court commissioner shall be retained for a term of four years unless the judges of the courts the
103 commissioner serves ~~remove vote not to retain~~ the commissioner in accordance with paragraph
104 ~~(6)(C)(8)(B) or unless the Judicial Council does not certify the commissioner for retention under rule 3-~~
105 ~~111~~. The term of office of court commissioners holding office on April 1, 2011 shall end December 31 of
106 the year in which their term would have ended under the former rule.

107 (6) Court commissioner Pperformance evaluation and public comments review.

108 (6)(A) Performance evaluations and performance plans. The presiding judge of ~~the each~~ district
109 ~~and court level the commissioner serves~~ shall prepare an evaluation of the commissioner's performance
110 ~~and a performance plan in accordance with Rule 3-111. on an annual basis, on forms provided by the~~
111 ~~administrative office. The presiding judge shall provide copies of the evaluation to the Judicial Council. A~~
112 ~~copy of the performance plan and any subsequent evaluation shall be maintained in the official personnel~~
113 ~~file in the administrative office.~~ Court commissioners shall comply with the program for judicial
114 performance evaluation, including ~~any recommendations made in the evaluation~~ expectations set forth in
115 a performance plan.

116 ~~(B) When the public comment period has closed, the comments shall go to the presiding judge in the~~
117 ~~district in which the commissioner serves. If any comments would negatively affect the presiding judge's~~
118 ~~decision on whether to discipline or remove the commissioner from office, the commissioner shall be~~
119 ~~given notice and an opportunity to respond to the comments.~~

120 (6)(B) Public comment period results. When the public comment period for a commissioner
121 provided in paragraph (4) closes, the comments shall be given to and reviewed by the presiding judge of
122 each district and court level the commissioner serves. If any comments would negatively affect the
123 presiding judge's decision of whether to sanction the commissioner or remove the commissioner from
124 office in accordance with paragraph (7), the commissioner shall be provided all comments with the
125 commenters' names redacted and the commissioner shall be given an opportunity to respond to the
126 comments.

127 (7) Sanctions or removal during a commissioner's term.~~Removal and sanctions.~~

128 (7)(A) Sanctions.

129 (7)(A)(i) The court commissioner may be sanctioned by the Council as the result of a formal
130 complaint filed under rule 3-201.02.

131 (7)(A)(ii) If the commissioner's performance is not satisfactory, the commissioner may be
132 sanctioned in accordance with paragraph (7)(A)(iii) by the presiding judge, or presiding judges if the
133 commissioner serves multiple districts or court levels, with the concurrence of a majority of the
134 judges of that jurisdiction in either district or court level the commissioner serves, may discipline the
135 commissioner.

136 (7)(A)(iii) Sanctions may include but are not limited to private or public censure, restrictions in
137 case assignments with corresponding reduction in salary, mandatory remedial education, and
138 suspension without pay for a period not to exceed 60 days. suspension for a period not to exceed 60
139 days, and reduction in salary

140 (7)(B) Removal.

141 (7)(B)(i) Removal by Judicial Council. During a commissioner's term, ~~T~~the court commissioner
142 may be removed by the Council:

143 (7)(B)(i)(a) as part of a reduction in force;
144 (7)(B)(i)(b) for failure to meet the evaluation ~~and certification~~ requirements; or
145 (7)(B)(i)(c) as the result of a formal complaint filed under rule 3-201.02 upon the concurrence
146 of two-thirds of the Council.

147 (7)(B)(ii) ~~or~~ Removal by District or Court Level.

148 (7)(B)(ii)(a) During a commissioner's term, if the commissioner's performance is not
149 satisfactory, the commissioner may be removed by the presiding judge, or presiding judges if the
150 commissioner serves multiple districts or court levels, only with the concurrence of a majority of
151 the judges in each district or court level the commissioner serves. ~~remove the commissioner from~~
152 office.

153 (7)(B)(ii)(b) If the commissioner serves multiple districts or court levels and one district or
154 court level contests a commissioner removal decision made by the other district or court level, the
155 Management Committee will review the decision, with final determination by the Judicial Council.

156 (7)(C) Review of District or Court Level Decisions. If the commissioner disagrees with ~~the a~~
157 ~~presiding judge's~~ district or court level's decision to sanction or remove, the commissioner may request a
158 review of the decision by the Management Committee of the Council.

159 (8) Retention

160 (8)(A) The Council shall review materials on the commissioner's performance ~~during~~ prior to the end
161 of the commissioner's term of office and the Council shall vote on whether the commissioner is eligible to
162 be retained for another term in accordance with rule 3-111.

163 (8)(CB) At the end of a commissioner's term, ~~the court commissioner may be removed without~~
164 cause by the judges of ~~the each courts~~ district and court level the commissioner serves ~~at the conclusion~~
165 of a term of office may vote not to retain the commissioner for another term of office. ~~Removal under this~~
166 paragraph ~~The decision not to retain is without cause and~~ shall be by the concurrence of a majority of ~~all~~
167 the ~~judges~~ of in each district and court level ~~the courts~~ the commissioner serves. A decision not to ~~remove~~
168 retain a commissioner under this paragraph shall be communicated to the commissioner within a
169 reasonable time after the decision is made, and not less than ~~30-60~~ days prior to the end of the
170 commissioner's term ~~termination~~.

171 (9) Salaries and benefits.

172 (9)(A) The Council shall annually establish the salary of court commissioners. In determining the
173 salary of the court commissioners, the Council shall consider the effect of any salary increase for judges
174 authorized by the Legislature and other relevant factors. Except as provided in paragraph (6), the salary
175 of a commissioner shall not be reduced during the commissioner's tenure.

176 (9)(B) Court commissioners shall receive annual leave of 20 days per calendar year and the same
177 sick leave benefits as judges of the courts of record. Annual leave not used at the end of the calendar
178 year shall not accrue to the following year. A commissioner hired part way through the year shall receive

179 annual leave on a prorated basis. Court commissioners shall receive the same retirement benefits as
180 non-judicial officers employed in the judicial branch.

181 ~~(109)~~ **Support services.**

182 (10)(A) Court commissioners shall be provided with support personnel, equipment, and supplies
183 necessary to carry out the duties of the office as determined by the presiding judge.

184 (10)(B) Court commissioners are responsible for requesting necessary support services from the
185 presiding judge.

Effective May 1, 2018