

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

2 **Intent:**

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

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

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

9 **Applicability:**

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

13 **Statement of the Rule:**

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

16 (1)(A) **Composition.** The Committee shall consist of one member of the Office of General
17 Counsel of the Administrative Office of the Courts; one member from the Criminal Appeals Division of
18 the Utah Attorney General's Office; one active or retired trial court judge from either a District or
19 Juvenile court in the state; one active or retired appellate court judge; one private civil appellate
20 attorney; two criminal defense appellate attorneys: at least one of whom is currently practicing in the
21 area of indigent criminal appeals in a legal defender's office, ~~as defined by Utah Code § 77-32-201~~
22 ~~(44)~~ under Utah Code § 77-32-302(2)(a) or (2)(b); one attorney practicing in the area of juvenile
23 delinquency defense appeals; and one attorney practicing in the area of child welfare defense
24 appeals.

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

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

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

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

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

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

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

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

57 (2)(C)(i) comply with the requirements of rule 38B of the Utah Rules of Appellate Procedure,
58 sections (b) through (e);

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

60 (2)(C)(iii) submit at least two appellate briefs to the Committee with a certification that the
61 applicant was substantially responsible for drafting the briefs;

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

64 (2)(C)(v) provide citations for all appellate decisions in which the applicant was counsel of
65 record; and

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

69 (2)(D) **Roster Selection.** The Board of Appellate Court Judges shall approve or disapprove the
70 recommendations of the Committee with respect to attorneys to be included on the appellate roster.
71 The Board may also at any time remove an attorney from the appellate roster based on an attorney's

72 qualifications, skills, experience, and prior performance in the Utah appellate courts. The Board may
73 not add to the roster an attorney who was not recommended by the Committee.

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

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

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

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

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

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

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

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

99 (2)(G) **Exemption.** Notwithstanding any other provision of this rule, any attorney currently
100 employed in a county or other regional "Legal defender's office" under Utah Code § 77-32-302(2)(a)
101 or (2)(b) (under Utah Code § 77-32-201 (12)), to provide court-appointed representation and defense
102 resources on appeal, shall be independently eligible for appointment to represent indigent parties on
103 appeal. This paragraph does not apply to an attorney who has contracted with a county in the
104 attorney's individual capacity to provide court-appointed representation and defense resources on
105 appeal.

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

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