

1 **Rule 3-201. Court commissioners.**

2
3 **Intent:**

4 To define the role of court commissioner.

5 To establish a term of office for court commissioners.

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

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

10 **Applicability:**

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

12 **Statement of the Rule:**

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

14 (2) **Qualifications.**

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

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

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

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

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

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

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

35 act. The committee shall act by the concurrence of a majority of the members voting. When voting upon
36 the qualifications of a candidate, the committee shall follow the ~~voting procedures of the judicial-~~
37 ~~nominating commissions established in the commissioner nominating manual.~~

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

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

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

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

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

68 (3)(I) The chair of the nominating committee shall present the names, applications, and the results of

69 background investigations of the nominees to the judges of the courts the court commissioner will serve.
70 The committee may indicate its order of preference.

71 (3)(J) The judges of the each courts level the court commissioner will serve shall together select one
72 of the nominees by a concurrence of a majority of judges voting. If the commissioner will serve more than
73 one judicial district, the concurrence of each court independent of the others a majority of judges in each
74 district is necessary for selection.

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

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

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

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

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

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

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

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

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

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

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

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

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

102 **(5) Term of office.** The court commissioner shall be appointed until December 31 of the third year

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

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

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

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

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

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

130 **(7)(A) Sanctions.**

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

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

137 ~~commissioner-~~

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

142 **(7)(B) Removal.**

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

145 (7)(B)(i)(a) as part of a reduction in force;

146 (7)(B)(i)(b) for failure to meet the evaluation ~~and certification~~ requirements; or

147 (7)(B)(i)(c) as the result of a formal complaint filed under rule 3-201.02 upon the concurrence
 148 of two-thirds of the Council.

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

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

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

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

161 **(8) Retention**

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

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

171 | reasonable time after the decision is made, and not less than ~~30~~60 days prior to the end of the
172 | commissioner's term ~~termination~~.

173 | ~~(9)~~ **Salaries and benefits.**

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

178 | (9)(B) Court commissioners shall receive annual leave of 20 days per calendar year and the same
179 | sick leave benefits as judges of the courts of record. Annual leave not used at the end of the calendar
180 | year shall not accrue to the following year. A commissioner hired part way through the year shall receive
181 | annual leave on a prorated basis. Court commissioners shall receive the same retirement benefits as
182 | non-judicial officers employed in the judicial branch.

183 | ~~(10)~~ **Support services.**

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

186 | (10)(B) Court commissioners are responsible for requesting necessary support services from the
187 | presiding judge.