

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,” “indigent defense  
12 services,” and “Indigent Appellate Defense Division” are defined in [Utah Code Sections 78B-22-](#)  
13 [102](#) and -802. For purposes of this rule:

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

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

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

25 **Applicability:**

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

29 **Statement of the Rule :**

30 (a) **Committee establishment.** The Standing Committee on Appellate Representation is  
31 established as a committee of the Board of Appellate Court Judges.

32 (1) **Composition.** The Committee consists of at least one attorney from the Criminal Appeals  
33 Division of the Utah Attorney General's Office; one attorney from each roster area set forth  
34 in paragraph (2)(b), one active or retired judge from an appellate court and one active or  
35 retired judge from another court of record, and the Chief Appellate Officer or designee of the  
36 Indigent Defense Commission.

37 (2) **Appointment.** Committee members are appointed by the Supreme Court and serve  
38 staggered four-year terms. The Supreme Court selects a chair from among the Committee's  
39 members. Judges who serve as members of the Committee will generally not be selected as  
40 chair. Committee members serve as officers of the court and not as representatives of any  
41 client, employer, or other organization or interest group. At the Committee's first meeting in  
42 any calendar year, and at every meeting at which a new Committee member first attends,  
43 each Committee member will briefly disclose the general nature of the member's legal  
44 practice.

45 (3) **Vacancies.** In the event of a Committee vacancy, the Supreme Court, after consulting  
46 with the Committee chair, will appoint a new Committee member from the same category as  
47 the prior Committee member to serve for the remaining unexpired term.

48 (4) **Absences.** If a Committee member fails to attend two consecutive Committee meetings,  
49 the chair may notify the Supreme Court of those absences and may request that the Supreme  
50 Court replace that Committee member.

51 (5) **Administrative assistance.** The Administrative Office of the Courts will coordinate staff  
52 support to the Committee, including the Office of General Counsel's assistance in research  
53 and drafting.

54 (b) **Appellate Roster.** The Board of Appellate Judges maintains an appellate roster of indigent  
55 service provider attorneys skilled in handling criminal, juvenile delinquency, and child welfare  
56 proceedings as defined in [Rule 1\(f\)](#) of the Utah Rules of Appellate Procedure, and termination of  
57 parental rights proceedings under [Section 78B-6-112](#).

58 (1) **Purpose of the Committee.** The Committee's purpose is to recommend to the Board of  
59 Appellate Court Judges attorneys for inclusion on an appellate roster of indigent defense  
60 service provider attorneys eligible for appointment by the courts of this state to represent  
61 indigent individuals on appeal before the Utah Supreme Court or the Utah Court of Appeals.  
62 Except as specified in paragraph (b)(9), only attorneys on the Appellate Roster are eligible  
63 for such court appointments.

64 (2) **Committee recommendations.** The Committee will consider and recommend attorneys  
65 for inclusion on the Appellate Roster based on the eligibility criteria listed in paragraph  
66 (b)(3), together with any other factor bearing on an applicant's ethics, diligence, competency,  
67 abilities in briefing and oral advocacy, and willingness to fairly, efficiently, and effectively  
68 provide appellate representation to indigent individuals on appeal. The Committee will  
69 consider issues such as quality of briefing, the applicant's frequency of inadequate briefing,  
70 summary dismissals, or involuntary dismissals, and the applicant's professionalism and  
71 civility. The Committee may also recommend removing an attorney from the Appellate  
72 Roster.

73 (3) **Eligibility criteria.** To be considered for the Appellate Roster, an applicant must at a  
74 minimum complete an application in a form provided by the Committee and:

75 (A) demonstrate that the applicant has briefed the merits in at least three appeals within  
76 the past three years or in 12 appeals total, or is directly supervised by an attorney with  
77 that experience;

78 (B) be a member of the Utah Bar in good standing;

79 (C) demonstrate knowledge of appellate practice as shown by experience, training, or  
80 legal education;

81 (D) demonstrate ability to adequately and effectively raise and argue issues on appeal and  
82 comply with applicable court rules;

83 (E) certify that the attorney has not, within the past three years, been the subject of an  
84 order issued by any appellate court imposing sanctions against counsel, discharging  
85 counsel, or taking other equivalent action against counsel because of counsel's  
86 substandard performance before an appellate court;

87 (F) must not have been removed from the Appellate Roster within the past year;

88 (G) submit at least two appellate briefs, at least one of which is in the relevant subject  
89 matter area, to the Committee with a certification that the applicant was primarily  
90 responsible for drafting the briefs;

91 (H) submit a petition under [Rule 55](#) of the Utah Rules of Appellate Procedure if the  
92 person is applying to be on the Appellate Roster for appeals from child welfare  
93 proceedings;

94 (I) provide citations for all appellate decisions in which the applicant was counsel of  
95 record; and

96 (J) certify that the applicant has sufficient time and administrative support to accept an  
97 appointment to provide indigent defense services for indigent individuals on appeal and  
98 to provide the effective assistance of counsel in every case and a willingness to commit  
99 those resources to that representation.

100 (4) **Roster Selection.** The Board of Appellate Court Judges will approve or disapprove the  
101 Committee's recommendations with respect to attorneys to be included on the Appellate  
102 Roster. Except as provided in paragraph (b)(7), the Board may not add to the roster an  
103 attorney who is not recommended by the Committee.

104 (5) **Mentoring.** If an attorney is selected for the Appellate Roster on the condition that the  
105 attorney have a mentor, then the attorney must select a mentor who meets the qualifications  
106 set forth in paragraphs (b)(3)(A)–(F). A mentor must have briefed the merits in at least three  
107 appeals within the past three years or in 12 appeals total. The attorney subject to the  
108 mentoring requirement must certify in each brief filed on behalf of an indigent individual that  
109 the attorney was directly supervised in drafting the brief by a mentor qualified under  
110 paragraphs (b)(3)(A)–(F). The attorney is not required to name the mentor in their  
111 certification.

112 (6) **Removal.** The Board may at any time remove an attorney from the Appellate Roster  
113 based on the attorney's qualifications, skills, experience, or prior performance in any  
114 appellate court, or the attorney's failure to maintain eligibility under paragraph (b)(8).

115 (7) **Reconsideration of removal or nonreappointment.** An attorney who is removed from  
116 the Appellate Roster before the end of the attorney's five-year appointment or who is not  
117 reappointed to a subsequent term may petition for reconsideration by submitting a letter to  
118 the Standing Committee on Appellate Representation. The letter must be submitted within 28  
119 days from the date of the notice informing the attorney of the removal or nonreappointment.  
120 The Committee will review all materials relevant to the attorney's petition and recommend to  
121 the Board of Appellate Court Judges whether the attorney's removal or nonreappointment  
122 should be upheld. The Board of Appellate Court Judges will approve or disapprove the  
123 Committee's recommendations.

124 (8) **Appointment term, CLE requirement, and reapplication.**

125 (A) An attorney's Appellate Roster appointment term is five years.

126 (B) During an attorney's Appellate Roster term, the attorney must complete at least 12  
127 hours of continuing legal education on topics directly relevant to the attorney's Appellate  
128 Roster work. The attorney must certify completion of the hours at the time of  
129 reapplication and provide documentation of the hours and topics completed.

130 (C) To maintain eligibility for appointment to provide indigent defense services on  
131 appeal, an attorney must reapply under the provisions of paragraph (b)(3) by September 1  
132 of the attorney's third year on the Appellate Roster. The attorney must be recommended  
133 by the Committee and reappointed to the Appellate Roster by the Board of Appellate  
134 Court Judges at the conclusion of the attorney's appointment term.

135 (9) **Exemption.** Attorneys employed by an indigent appellate defense service provider entity  
136 or the Indigent Appellate Defense Division to provide indigent defense services on appeal are  
137 exempt from the requirement to be included on the Appellate Roster. This exemption does  
138 not apply to an attorney or an entity that has contracted with an indigent defense service  
139 provider to provide indigent defense services on appeal.

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

- 144 (i) an appellate division whose primary focus is appellate representation;
- 145 (ii) a case management tracking system;
- 146 (iii) adequate administrative support;
- 147 (iv) one or more supervising attorneys who are on the appellate roster; and
- 148 (v) oversight and supervision of attorneys who handle appellate cases.

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

153 **(c) Annual schedule.** The Committee must meet at least annually and must submit its annual  
154 recommendations to the Board of Appellate Court Judges by December 31. If the Committee  
155 determines that additional recommendations should be submitted to the Board of Appellate Court  
156 Judges, the Committee may call for additional applications at any time. The Board of Appellate  
157 Court Judges will at its next meeting thereafter approve or disapprove the Committee's  
158 recommendations of attorneys to be included on the Appellate Roster.

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