

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
4 determining a roster of indigent service provider attorneys who are eligible for
5 appointment to represent indigent individuals on appeal to the Utah Supreme Court
6 and the Utah Court of Appeals.

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

8 To establish a schedule for recommending the appointment of indigent defense service
9 provider attorneys to, or the removal of indigent defense service provider attorneys
10 from, the Appellate Roster.

11 **Definitions:**

12 The terms “indigent defense service provider,” “indigent individual,” ~~and~~ “indigent
13 defense services,” and “Indigent Appellate Defense Division” are defined in Utah Code
14 Sections 78B-22-102 and -802.

15 For purposes of this rule: ~~an~~

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

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

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

27 **Applicability:**

28 This rule ~~shall apply~~applies to the internal operation of the Board of Appellate Court
29 Judges and the Committee on Appellate Representation and to courts of record in cases
30 involving indigent individuals.

31 **Statement of the Rule:**

32 ~~(1a)~~ Committee E~~establishment~~. The Standing Committee on Appellate Representation
33 is ~~hereby~~ established as a committee of the Board of Appellate Court Judges.

34 ~~(A1)~~ Composition. The Committee ~~shall~~consists of at least:

35 (A) One attorney from the Criminal Appeals Division of the Utah Attorney
36 General's Office;

37 (B) One attorney from an indigent defense service provider representing
38 criminal defendants in counties of the first or second class;

39 (C) The Chief Appellate Officer or designee of the Indigent Appellate Defense
40 Division;

41 (D) One attorney on the Appellate Roster for criminal appeals;

42 (E) One attorney on the Appellate Roster for juvenile delinquency appeals;

43 (F) One attorney on the Appellate Roster for child welfare appeals;

44 (G) One active or retired judge from an appellate court;

45 (H) One active or retired judge from another court of record.

46 ~~one active or retired trial court judge from either a district or juvenile court in~~
47 ~~the state; one active or retired appellate court judge; one private civil~~
48 ~~appellate attorney; two criminal defense appellate attorneys; at least one of~~
49 ~~whom is currently practicing in the area of indigent criminal appeals for an~~
50 ~~indigent defense provider entity; one attorney practicing in the area of~~
51 ~~juvenile delinquency defense appeals; one attorney practicing in the area of~~
52 ~~child welfare proceedings as defined in Rule 1(f) of the Utah Rules of~~
53 ~~Appellate Procedure; and one attorney practicing in the area of termination of~~

54 ~~parental rights proceedings under Section 78B-6-112. The Director or~~
55 ~~designee of the Indigent Defense Commission shall be an ex-officio, non-~~
56 ~~voting member who shall not participate in the committee's recommendation~~
57 ~~of attorneys for the roster.~~

58 **(B2) Appointment.** Committee members ~~shall be~~are appointed by the Supreme
59 Court and serve staggered four-year terms. The Supreme Court ~~shall select~~s a chair
60 from among the Committee's members. Judges who serve as members of the
61 Committee will generally ~~shall~~ not be selected as chair. Committee members ~~shall~~
62 serve as officers of the court and not as representatives of any client, employer, or
63 other organization or interest group. At the ~~first meeting of the~~ Committee's first
64 meeting in any calendar year, and at every meeting at which a new Committee
65 ~~of the Committee~~ first attends, each Committee member ~~shall~~will briefly
66 disclose the general nature of ~~his or her~~the member's legal practice.

67 **(C3) Vacancies.** In the event of a ~~vacancy on the~~ Committee vacancy, the Supreme
68 Court, after consultationing with the Committee chair, ~~shall~~will appoint a new
69 Committee member from the same category as the prior Committee member to
70 serve for the ~~remainder of the~~remaining unexpired term.

71 **(D4) Absences.** ~~In the event that~~If a Committee member fails to attend two
72 consecutive Committee meetings, the chair may notify the Supreme Court of those
73 absences and may request that the Supreme Court replace that Committee member.

74 **(E5) Administrative assistance.** The Administrative Office of the Courts ~~shall~~will
75 coordinate staff support to the Committee, including the ~~assistance of the~~ Office of
76 General Counsel's assistance in research and drafting.

77 **(2b) Appellate Roster.** The Board of Appellate Judges ~~shall create and~~maintains an
78 appellate roster of indigent service provider attorneys skilled in handling criminal,
79 juvenile delinquency, and child welfare proceedings as defined in Rule 1(f) of the Utah

80 Rules of Appellate Procedure, and termination of parental rights proceedings under
81 [Section 78B-6-112.](#)

82 **(A1) Purpose of the Committee.** The ~~purpose of the~~ Committee's purpose shall beis
83 to recommend to the Board of Appellate Court Judges attorneys for inclusion on an
84 appellate roster of indigent defense service provider attorneys eligible for
85 appointment by the courts of this state to represent indigent individuals on appeal
86 before the Utah Supreme Court or the Utah Court of Appeals. Except as specified in
87 paragraph ~~(2b)(19) of this rule~~, only attorneys on the Appellate Roster shall beare
88 eligible for such court appointments.

89 **(B2) Committee recommendations.** The Committee ~~shall~~will consider and
90 recommend attorneys for inclusion on the Appellate Roster based on the eligibility
91 criteria listed in paragraph ~~(2b)(C3)~~, together with any other factor bearing on an
92 applicant's ethics, diligence, competency, abilities in briefing and oral advocacy, and
93 willingness to fairly, efficiently, and effectively provide appellate representation to
94 indigent individuals on appeal. The Committee ~~shall~~will consider issues such as
95 quality of briefing, the applicant's frequency of inadequate briefing, summary
96 dismissals, or involuntary dismissals, and the applicant's professionalism and
97 civility. The Committee may also recommend ~~the removal of~~removing an attorney
98 from the Appellate Roster.

99 **(C3) Eligibility criteria.** To be considered for ~~inclusion on~~ the Appellate Roster, an
100 applicant must at a minimum ~~shall~~ complete an application in a form provided by
101 the Committee and:

102 ~~(iA)~~ demonstrate that the applicant has briefed the merits in at least three
103 appeals within the past three years or in 12 appeals total, or is directly
104 supervised by an attorney with that experience;

105 ~~(iiB)~~ be a member of the Utah Bar in good standing;

- 106 (~~iii~~C) demonstrate knowledge of appellate practice as shown by experience,
107 training, or legal education;
- 108 (~~iv~~D) demonstrate ability to adequately and effectively raise and argue issues on
109 appeal and comply with applicable court rules;
- 110 (~~v~~E) certify that the attorney has not, within the ~~preceding~~past three years, been
111 the subject of an order issued by any appellate court imposing sanctions against
112 counsel, discharging counsel, or taking other equivalent action against counsel
113 because of counsel's substandard performance before an appellate court;
- 114 (~~vi~~F) must not have been removed from the Appellate Roster within the past
115 year;
- 116 (~~vii~~G) submit at least two appellate briefs, at least one of which is in the relevant
117 subject matter area, to the Committee with a certification that the applicant was
118 primarily responsible for drafting the briefs;
- 119 (~~viii~~H) submit a petition ~~pursuant to~~under Rule 55 of the Utah Rules of Appellate
120 Procedure if the person is applying to be on the Appellate Roster for appeals
121 from child welfare proceedings;
- 122 (~~ix~~I) provide citations for all appellate decisions in which the applicant was
123 counsel of record; and
- 124 (~~x~~J) certify that the applicant has sufficient time and administrative support to
125 accept an appointment to provide indigent defense services for indigent
126 individuals on appeal and to provide the effective assistance of counsel in every
127 case and a willingness to commit those resources to that representation.
- 128 (~~D4~~) **Roster Selection.** The Board of Appellate Court Judges ~~shall~~will approve or
129 disapprove the ~~recommendations of the~~ Committee's recommendations with respect
130 to attorneys to be included on the Appellate Roster. Except as provided in
131 paragraph (~~2b~~)(~~G7~~), the Board may not add to the roster an attorney who is not
132 recommended by the Committee.

133 ~~(E5)~~ **Mentoring.** If an attorney is selected for the Appellate Roster on the condition
134 that the attorney have a mentor, then the attorney must select a mentor who meets
135 the qualifications set forth in ~~this rule at~~ paragraphs ~~(2b)(C3)(iA)~~ (2b)(C3)(iA) ~~--(viF)~~. A mentor
136 must have briefed the merits in at least three appeals within the past three years or
137 in 12 appeals total. The attorney subject to the mentoring requirement ~~shall~~ must
138 certify in each brief filed on behalf of an indigent individual that the attorney was
139 directly supervised in drafting the brief by a mentor qualified under paragraphs
140 ~~(2b)(C3)(iA)~~ (2b)(C3)(iA) ~~--(viF)~~. The attorney is not required to name the mentor in their
141 certification.

142 ~~(F6)~~ **Removal.** The Board may at any time remove an attorney from the Appellate
143 Roster based on the attorney's qualifications, skills, experience, or prior performance
144 in any appellate court, or the attorney's failure to maintain eligibility under
145 paragraph ~~(2b)(H8)~~ (2b)(H8).

146 ~~(G7)~~ **Reconsideration of removal or non-reappointment.** An attorney who is
147 removed from the Appellate Roster before the end of the attorney's ~~three~~ five-year
148 appointment or who is not reappointed to a subsequent term may petition for
149 reconsideration ~~in the form of a letter submitted by~~ submitting a letter to the
150 Standing Committee on Appellate Representation. The letter ~~shall~~ must be
151 submitted within ~~30~~ 28 days from the date of the notice informing the attorney of the
152 removal or non-reappointment. The Committee ~~shall~~ will review all materials
153 relevant to the attorney's petition and recommend to the Board of Appellate Court
154 Judges whether the attorney's removal or non-reappointment should be upheld. The
155 Board of Appellate Court Judges ~~shall~~ will approve or disapprove the
156 ~~recommendations of the~~ Committee's recommendations.

157 ~~(H8)~~ **Term of a** Appointment term, CLE requirement, and reapplication.

158 ~~(iA)~~ An attorney's Appellate Roster appointment term is ~~three~~ five years.

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

164 ~~(C)~~ (C) To maintain eligibility for appointment to provide indigent defense services
165 on appeal, an attorney must reapply under the provisions of paragraph ~~(2b)~~ (C3)
166 by September 1 of the attorney's ~~third-fifth~~ year on the Appellate Roster. The
167 attorney must be recommended by the Committee and reappointed to the
168 Appellate Roster by the Board of Appellate Court Judges at the conclusion of the
169 attorney's appointment term.

170 ~~(19)~~ (19) **Exemption.** Attorneys employed by an indigent appellate defense service
171 provider entity or the Indigent Appellate Defense Division to provide indigent
172 defense services on appeal are exempt from the requirement to be included on the
173 Appellate Roster. This exemption does not apply to an ~~indigent defense service~~
174 ~~provider~~ attorney or an entity who~~that~~ has contracted with an indigent defense
175 service provider ~~entity in the attorney's individual capacity~~ to provide indigent
176 defense services on appeal.

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

181 (i) an appellate division whose primary focus is appellate representation;

182 (ii) a case management tracking system;

183 (iii) adequate administrative support;

184 (iv) one or more supervising attorneys who are on the appellate roster; and

185 (v) oversight and supervision of attorneys who handle appellate cases.

186 (B) Inclusion in an entity's exemption. To be included in an entity's exemption,
187 an attorney must be employed by the indigent appellate defense service provider
188 entity. Independent contractors do not qualify under an indigent appellate
189 defense service provider entity's exemption.

190 ~~(3c)~~ **Annual S**chedule. The Committee ~~shall~~must meet at least annually and ~~shall~~must
191 submit its annual recommendations to the Board of Appellate Court Judges by
192 December 31~~-each year~~. If the Committee determines that additional recommendations
193 should be submitted to the Board of Appellate Court Judges, the Committee may call
194 for additional applications at any time. The Board of Appellate Court Judges ~~shall~~will at
195 its next meeting thereafter approve or disapprove the Committee's recommendations ~~of~~
196 ~~the Committee with respect to~~of attorneys to be included on the Appellate Roster.

197 ~~(4d)~~ **Contracts in effect before** ~~adoption of this rule's~~ adoption. An attorney who,
198 before this rule's adoption~~-of this rule~~, contracted with a government entity to represent
199 indigent individuals on appeal is subject to the provisions of Rule 38B of the Utah Rules
200 of Appellate Procedure. Upon the contract's termination, expiration, or renewal~~-of the~~
201 ~~contract~~, the attorney is subject to ~~the provisions of~~ this rule.