

CJA Rule 3-201

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

2 **Intent:**

3 To define the role of court commissioner.

4 To establish a term of office for court commissioners.

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

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

9 **Applicability:**

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

11 **Statement of the Rule:**

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

13 (2) **Qualifications.**

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

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

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

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

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

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

29 (3)(C) A committee for the purpose of nominating candidates for the position of court
30 commissioner shall consist of the presiding judge or designee from each court
31 level and judicial district that the commissioner will serve, three lawyers, and two
32 members of the public. Committee members shall be appointed by the presiding

CJA Rule 3-201

33 judge of the district court of each judicial district. The committee members shall
34 serve three year terms, staggered so that not more than one term of a member of
35 the bench, bar, or public expires during the same calendar year. The presiding
36 judge shall designate a chair of the committee. All members of the committee
37 shall reside in the judicial district. All members of the committee shall be voting
38 members. A quorum of one-half the committee members is necessary for the
39 committee to act. The committee shall act by the concurrence of a majority of the
40 members voting. When voting upon the qualifications of a candidate, the
41 committee shall follow the procedures established in the commissioner
42 nominating manual.

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

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

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

64 (3)(G) The nominating committee shall review the applications of qualified applicants
65 and may investigate the qualifications of applicants to its satisfaction. The
66 committee shall interview selected applicants and select the three best qualified

CJA Rule 3-201

67 candidates. All voting shall be by confidential ballot. The committee shall
68 receive public comment on those candidates as provided in paragraph (4). Any
69 candidate may be reconsidered upon motion by a committee member and upon
70 agreement by a majority of nominating committee members.

71 (3)(H) When the public comment period as provided in paragraph (4) has closed, the
72 comments shall be given to the nominating committee. If any comments would
73 negatively affect the committee's decision on whether to recommend a
74 candidate, the candidate shall be given all comments with the commenters'
75 names redacted and an opportunity to respond to the comments. If the
76 committee decides not to recommend a candidate based on the comments, the
77 committee shall select another candidate from the interviewed applicants and
78 again receive public comment on the candidates as provided in paragraph (4).

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

83 (3)(J) The judges of each court level the court commissioner will serve shall together
84 select one of the nominees by a concurrence of a majority of judges voting. If the
85 commissioner will serve more than one judicial district, the concurrence of a
86 majority of judges in each district is necessary for selection.

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

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

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

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

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

CJA Rule 3-201

- 101 (4)(B) For final candidates, the nominating committee shall be responsible for giving
102 notice of the public comment period.
- 103 (4)(C) For court commissioners, the district in which the commissioner serves shall be
104 responsible for giving notice of the public comment period.
- 105 (4)(D) The nominating committee or district in which the commissioner serves shall:
106 (4)(D)(i) email notice to each active member of the Utah State Bar including
107 the names of the nominees or court commissioner with instructions on
108 how to submit comments;
- 109 (4)(D)(ii) issue a press release and other public notices listing the names of the
110 nominees or court commissioner with instructions on how to submit
111 comments; and
- 112 (4)(D)(iii) allow at least 10 days for public comment.
- 113 (4)(E) Individuals who comment on the nominees or commissioners should be
114 encouraged, but not required, to provide their names and contact information.
- 115 (4)(F) The comments are classified as protected court records and shall not be made
116 available to the public.
- 117 (5) **Term of office.** The court commissioner shall be appointed until December 31 of the third
118 year following concurrence by the Council. At the conclusion of the first term of office and
119 each subsequent term, the court commissioner shall be retained for a term of four years
120 unless the judges of the courts the commissioner serves vote not to retain the
121 commissioner in accordance with paragraph (8)(B) or unless the Judicial Council does not
122 certify the commissioner for retention under rule 3-111. The term of office of court
123 commissioners holding office on April 1, 2011 shall end December 31 of the year in which
124 their term would have ended under the former rule.
- 125 (6) **Court commissioner performance review.**
- 126 (6)(A) **Performance evaluations and performance plans.** The presiding judge of
127 each district and court level the commissioner serves shall prepare an evaluation
128 of the commissioner's performance and a performance plan in accordance with
129 Rule 3-111. Court commissioners shall comply with the program for judicial
130 performance evaluation, including expectations set forth in a performance plan.
- 131 (6)(B) **Public comment period results.** When the public comment period for a
132 commissioner provided in paragraph (4) closes, the comments shall be given to
133 and reviewed by the presiding judge of each district and court level the
134 commissioner serves. If there are any negative comments ~~would negatively~~

~~affect the presiding judge's decision of whether to sanction the commissioner take corrective actions or remove the commissioner from office in accordance with paragraph (7), the negative comments shall be provided to the commissioner shall be provided all comments~~ with the commenters' names redacted and the commissioner shall be given an opportunity to respond to the comments.

(7) **Sanctions Corrective action or removal during a commissioner's term.**

(7)(A) **Sanctions Corrective action.**

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

(7)(A)(ii) If the commissioner's performance is not satisfactory, ~~the commissioner may be sanctioned~~ corrective actions may be taken in accordance with paragraph (7)(A)(iii) by the presiding judge, or presiding judges if the commissioner serves multiple districts or court levels, with the concurrence of a majority of the judges in either district or court level the commissioner serves.

(7)(A)(iii) ~~Sanctions Corrective actions~~ may include but are not limited to private or public censure, restrictions in case assignments with corresponding reduction in salary, mandatory remedial education, ~~and~~ suspension without pay for a period not to exceed 60 days, and removal under (7)(B)(i)(c).

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

(7)(B)(i) **Removal by Judicial Council.** During a commissioner's term, the court commissioner may be removed by the Council:

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

(7)(B)(i)(b) for failure to meet the evaluation requirements; or

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

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

(7)(B)(ii)(a) During a commissioner's term, if the commissioner's performance is not satisfactory, the commissioner may be removed by the presiding judge, or presiding judges if the commissioner serves multiple districts or court levels,

CJA Rule 3-201

169 only with the concurrence of a majority of the judges in
170 each district or court level the commissioner serves.
171 (7)(B)(ii)(b) If the commissioner serves multiple districts or court
172 levels and one district or court level contests a
173 commissioner removal decision made by the other
174 district or court level, the Management Committee will
175 review the decision, with final determination by the
176 Judicial Council.

177 (7)(C) **Review of District or Court Level Decisions.** If the commissioner disagrees
178 with a district or court level's decision to ~~sanction~~remove the commissioner or
179 take corrective actions~~er remove~~, the commissioner may request a review of the
180 decision by the Management Committee of the Council.

181 (8) **Retention.**

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

186 (8)(B) At the end of a commissioner's term, the judges of each district and court level
187 the commissioner serves may vote not to retain the commissioner for another
188 term of office. The decision not to retain is without cause and shall be by the
189 concurrence of a majority of the judges in each district and court level the
190 commissioner serves. A decision not to retain a commissioner under this
191 paragraph shall be communicated to the commissioner within a reasonable time
192 after the decision is made, and not less than 60 days prior to the end of the
193 commissioner's term .

194 (9) **Salaries and benefits.**

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

200 (9)(B) Court commissioners shall receive annual leave of 20 days per calendar year
201 and the same sick leave benefits as judges of the courts of record. Annual leave
202 not used at the end of the calendar year shall not accrue to the following year. A

CJA Rule 3-201

203 commissioner hired part way through the year shall receive annual leave on a
204 prorated basis. Court commissioners shall receive the same retirement benefits
205 as non-judicial officers employed in the judicial branch.

206 (10) **Support services.**

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

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

212 *Effective May/November 1, 20____*