

Outline of Presentation on the Appellate Roster to the Parental Defense Alliance of Utah

April 11, 2019

1. History of the Appellate Roster Rule/Committee

- a. Rule 38B has been around for quite a while but needed a robust update.
- b. The Appellate Courts were interested in a vetted roster from which counsel for indigent parties in child welfare, delinquency, and criminal appeals could be appointed.
- c. Rule 11-401 was born out of that desire and that rule created the Appellate Representation Standing Committee and set standards for applicants to the roster.
- d. The rule is still in the development stage to some extent as the committee and the Supreme Court see the need for changes to accommodate these new procedures.

2. Summary of Rule 11-401

- a. The rule is intended to eventually supplant Appellate Rule 38B.
- b. The rule applies to all areas of indigent appeals
- c. The rule requires that attorneys either be on the roster or exempt in order to be eligible for appointment in the three case types.
- d. The rule sets the standards by which applicants are vetted and attorneys are retained on the roster.
- e. The rule provides that the Appellate Representation Committee make recommendations to the Appellate Board, but that the Board decide on the roster composition.

3. Summary of the Application Process

- a. The Appellate Representation Committee calls for attorney applicants in an announcement to the Bar.
- b. Applicants fill out and submit the application to the court contact person.
- c. The Appellate Representation Committee thoroughly reviews the applicant materials, calls references, and meets to discuss the applicants' qualifications. The committee then submits its recommendations along with the applicants' materials to the Appellate Board.
- d. The Appellate Board meets to discuss the applicants and decides whether to adopt the committee's recommendations.
- e. Applicants are then informed by letter of the outcome of their applications within a few days of the Board's decision.

4. Application of the Rule to Child Welfare/Delinquency Cases

- a. Delinquency cases are treated no differently than criminal appeals. Appellate counsel is appointed from the roster when an appeal is filed.

- b. Child welfare cases are unique in that the trial counsel prepares the initial Appellate Rule 55 petition and appellate counsel is only appointed if the appellate court calls for full briefing.

Rule 11-401. Standing Committee on Appellate Representation

Intent:

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

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

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

Applicability:

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

Statement of the Rule:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2)(D) **Roster Selection.** The Board of Appellate Court Judges shall approve or disapprove the recommendations of the Committee with respect to attorneys to be included on the appellate roster. The Board may also at any time remove an attorney from the appellate roster based on an attorney's qualifications, skills, experience, and prior performance in the Utah appellate courts. The Board may not add to the roster an attorney who was not recommended by the Committee.

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

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

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

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

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

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

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

or

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

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

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

(3) **Annual Schedule.** The Committee shall meet at least annually and shall submit its recommendations to the Board of Appellate Court Judges by February 1 of each year. The Board of Appellate Court Judges shall at its next meeting

thereafter approve or disapprove the recommendations of the Committee with respect to attorneys to be included on the appellate roster.

Effective October 29, 2018 pursuant to CJA Rule 11-105

UTAH APPELLATE ROSTER APPLICATION

Check the Appellate Roster(s) for which you wish to be considered.

- Criminal Appeals**
- Juvenile Delinquency Appeals**
- Appeals from Child Welfare Proceedings**

1. Contact Information

Name:

Firm Name:

Office Address:

City, State, Zip Code:

Phone Number:

Mobile Number:

Email Address:

Best Way to Contact You:

2. Are you an active member in good standing with the Utah State Bar?

Yes No

3. Bar Admissions (list all bar admissions and date admitted).

4. Do you have an established law practice in the State of Utah?

Yes No

Please describe the nature and location of your practice (*e.g.*, “My practice largely consists of state trial work (85%) with some appellate work in Utah County”).

5. Disciplinary History

- a. Have you ever been disciplined, or are you the subject of any pending disciplinary proceeding in the bar of any court (state or federal)?
Yes No

- b. In the past three years, have you been the subject of an order issued by any appellate court imposing sanctions, discharging you, or taking other equivalent action against you because of your substandard performance before an appellate court?
Yes No

If you answered “yes” to either question, please explain: N/A

6. Education & Degrees (undergraduate, graduate and law school)

7. Practice & Experience

- a. Do you have a working knowledge of appellate procedure and are you competent to accept membership on the Utah Appellate Roster?
Yes No

- b. Have you personally prepared the briefing on the merits in at least three appeals within the past three years or in 12 appeals total?
Yes No

- c. Have you been substantially responsible for briefing the merits in at least three appeals within the past three years or in 12 appeals total?
Yes No

- d. If you are applying to be on the roster for appeals from child welfare proceedings, have you prepared or been substantially responsible for preparing an Appellate Rule 55 Petition?
Yes No

- e. Have you completed the equivalent of 12 months of full time employment, either as an attorney or as a law student or in an appellate practice setting, which may include but is not limited to appellate judicial clerkships, appellate clerkships with the Utah Attorney General's Office, or appellate clerkships with a legal services agency that represents indigent parties on appeal?

Yes No

If you answered yes, during that employment, did you have significant personal involvement in researching legal issues and preparing appellate briefs or appellate opinions, and did you gain experience with the Utah Rules of Appellate Procedure?

Yes No

If yes, please explain.

- f. Provide a general description of your practice, and include an approximate caseload with a percentage of your practice that is devoted to appeals.
- g. State the approximate number of appellate cases in which you were substantially responsible for preparing the briefs within the last five years. Include the name of the case, the citation for the case, and whether you presented oral arguments in the case.

8. CLE Courses

List any Continuing Legal Education (CLE) courses you have taken in the last five years that may be relevant to appellate advocacy and appellate skills.

9. Indigent Representation

Do you currently represent or have you previously represented indigent individuals in the trial court or appellate courts? If yes, please describe.

10. Public Sector Employment

Have you ever been employed as a prosecutor, public defender, law clerk, judge, or justice?

Yes No

If yes, please describe the position, the name of your employer and the approximate dates of service.

11. Special Qualifications

a. Do you have a particular area of legal expertise such as immigration law, non-capital habeas corpus, white collar fraud, Indian law, etc.?

Yes No

If yes, please describe.

b. Are you fluent in another language?

Yes No

If yes, please describe.

c. Please describe any special qualifications, experience, or any other considerations relevant to the particular roster for which you are applying:

Criminal Appeals:

Juvenile Delinquency Appeals:

Child Welfare Proceedings:

12. Availability

- a. Are there any counties or district courts from which you *will not* accept an appointment to represent an indigent party on appeal? (e.g., too far away, conflict with attorneys, etc.).

Yes No

If yes, please list the counties or district courts from which *you will not* accept an appointment:

- b. Do you have sufficient time and support to accept an appointment to the Utah Appellate Roster?

Yes No

13. Mentoring

- I am willing to be a mentor.

14. References

Please list two legal references who can assess your skills relevant to this Utah Appellate Roster application and provide their addresses, e-mail addresses, and telephone numbers.

15. Certifications, Signature and Date

I certify that the information contained in this application is true and correct, and that I was substantially responsible for drafting the two briefs I now submit to the Committee as part of my application for membership on the Utah Appellate Roster.

Signature _____

Date _____