02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

94-649 MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Chapter 3: ELIGIBILITY REQUIREMENTS FOR SPECIALIZED CASE TYPES

Summary: Chapter 2 of the Commission's Rules sets out the minimum eligibility requirements to be rostered to accept appointments from the Maine Commission on Indigent Legal Services ("MCILS"). The Rules in this Chapter are promulgated to establish the eligibility requirements to be rostered on specialty panels for specific types of cases.

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SECTION 1. Definitions. For purposes of this Chapter, the following terms are defined as follows:

1. Contested Hearing. "Contested Hearing" means a hearing at which a contested issue is submitted to the court for resolution after evidence is taken or witnesses are presented.

2. Domestic Violence. "Domestic Violence" means:

   A. Offenses denominated as Domestic Violence under 17-A M.R.S.A. §§ 207-A, 209-A, 210-B, 210-C, and 211-A;
   B. Any class D or E offense alleged to have been committed against a family or household member or dating partner;
   C. The class D offense of stalking under 17-A M.R.S.A. § 210-A;
   D. Violation of a protection order under 17-A M.R.S.A. § 506-B.
   E. "Domestic Violence" includes crimes involving substantially similar conduct in another jurisdiction.
   F. "Domestic Violence" also includes Criminal Conspiracy under 17-A M.R.S.A. § 151, Criminal Attempt under 17-A M.R.S.A. § 152, and Criminal Solicitation under 17-A M.R.S.A. § 153 to commit any of the offenses listed above.

3. Serious Violent Felony. "Serious Violent Felony" means an offense under 17-A

M.R.S.A. §§ 152-A, 208, 208-B, 208-C, 301, 401(1)(B)(1), (2), or (3), 402-A (1)(A), 651, 802, 803-A, 1105-A, 1105-B, and 1105-C. "Serious Violent Felony" includes crimes involving substantially similar conduct in another jurisdiction. "Serious Violent Felony" also includes Criminal Conspiracy under 17-A M.R.S.A. § 151, Criminal Attempt under 17-A M.R.S.A. § 152, and Criminal Solicitation under 17-A M.R.S.A. § 153 to commit any of the offenses listed above.

4. Sex Offense. "Sex Offense" means an offense under Chapter 11 of the Criminal Code, 17-A M.R.S.A. §§ 251-261, or under Chapter 12 of the Criminal Code, 17-A M.R.S.A. §§ 281-285. "Sex Offense" includes crimes involving substantially similar conduct in another jurisdiction. "Sex Offense" also includes Criminal Conspiracy under 17-A M.R.S.A. § 151, Criminal Attempt under 17-A M.R.S.A. § 152, and Criminal Solicitation under17-A M.R.S.A. § 153 to commit any of the offenses listed above.

5. Specialized Case Types. "Specialized Case Types" means those cases that are complex in nature due to the allegations against the person as well as the severity of the consequences if a conviction occurs. They include the following case types:

   A. Homicide, including OUI manslaughter
   B. Sex offenses
   C. Serious violent felonies
   D. Operating under the influence
   E. Domestic violence
   F. Juvenile defense
   G. Protective custody matters
   H. Involuntary commitment

SECTION 2. Powers and Duties of the Executive Director

1. The Executive Director, or his or her designee, shall develop an application process for an attorney seeking appointment(s) in Specialized Case Types to demonstrate the minimum qualifications necessary to be placed on Specialized Case Type Rosters. An applicant for a Specialized Case Type Roster must present additional information beyond the minimum requirements of this Chapter if requested by the Executive Director, or his or her designee.

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2. The Executive Director, or his or her designee, shall have the sole discretion to make the determination if an attorney is qualified to be placed on a Specialized Case Type Roster. In addition, the Executive Director, or his or her designee, shall have the sole discretion, to grant or deny a waiver pursuant to, and in accordance with, Section 4.

3. The Executive Director, or his or her designee, may, in his or her sole discretion, remove an attorney from a Specialized Case Type Roster at any time if the attorney is not meeting the minimum qualifications and standards as determined by the Executive Director, or his or her designee.

4. This subsection does not exempt an attorney from satisfying the requirements of this Chapter at any time thereafter or limit the authority of the Executive Director, or his or her designee, to remove an attorney from any Specialized Case Type Roster at any time.

SECTION 3. Minimum Eligibility Requirements for Specialized Case Types.

1. **Homicide.** In order to be rostered for homicide cases an attorney must:

   A. Have at least five years of criminal law practice experience;
   B. Have tried before a judge or jury as first chair at least five felony cases within the last ten years, at least two of which were serious violent felony, homicide, or Class C or higher sex offense cases, AND at least two of which were jury trials;
   C. Have tried as first chair a homicide case in the last fifteen years, OR have tried as second chair at least one homicide cases with an experienced homicide defense attorney within the past five years;
   D. Demonstrate a knowledge and familiarity with the evidentiary issues relevant to homicide cases, including but not limited to forensic and scientific issues relating to DNA testing and fingerprint analysis, mental health issues, and eyewitness identification;
   E. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with homicide; and
   F. Have submitted to the Commission three letters of reference from attorneys with whom the applicant does not practice, that assert that the applicant is qualified to represent individuals charged with homicide, including OUI manslaughter. The

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letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.

2. **Sex Offenses.** In order to be rostered for sex offense cases an attorney must:

   A. Have at least three years of criminal law practice experience;
   B. Have tried before a judge or jury as first chair at least three felony cases in the last ten years, at least two of which were jury trials;
   C. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with a sex offense; and
   D. Have submitted to the Commission three letters of reference from attorneys with whom the applicant does not practice, that assert that the applicant is qualified to represent individuals charged with a sex offense. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.

3. **Serious Violent Felonies.** In order to be rostered for serious violent felony cases an attorney must:

   A. Have at least two years of criminal law practice experience;
   B. Have tried as first chair at least four criminal or civil cases in the last ten years, at least two of which were jury trials and at least two of which were criminal trials;
   C. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with a serious violent felony; and
   D. Have submitted to the Commission three letters of reference from attorneys with whom the applicant does not practice, that assert that the applicant is qualified to represent individuals charged with a serious violent felony. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.

4. **Operating Under the Influence.** In order to be rostered for OUI cases an attorney must:

   A. Have at least one year of criminal law practice experience;
   B. Have tried before a judge or jury as first chair at least two criminal cases, and conducted at least two contested hearings within at least the last ten years;
   C. Have obtained in the last three years at least four hours of CLE credit on topics

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relevant particularly to OUI defense;

D. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with an OUI; and

E. Have submitted to the Commission three letters of reference from attorneys with whom the applicant does not practice, that assert that the applicant is qualified to represent individuals charged with an OUI. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.

5. **Domestic Violence.** In order to be rostered for domestic violence cases an attorney must:

A. Have at least one year of criminal law practice experience;

B. Have tried before a judge or jury as first chair at least two criminal case and conducted at least two contested hearings within at least the last ten years;

C. Have obtained in the last three years at least four hours of CLE credit on topics related to domestic violence defense which included training on the collateral consequences of such convictions;

D. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with a domestic violence crime; and

E. Have submitted to the Commission three letters of reference from attorneys with whom the applicant does not practice, that assert that the applicant is qualified to represent individuals charged with a domestic violence crime. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.

6. **Juvenile Defense.** In order to be rostered for juvenile defense cases an attorney must:

A. For civil offenses and misdemeanor cases:

1) Have at least 6 months criminal or civil law practice experience or have completed a legal internship at a district attorney's office or have completed a legal internship in a juvenile law clinic;

2) Have attended in the last three years at least two hours of CLE credit on one or more of the following topics related to juvenile defense including training and education regarding: placement options and dispositional alternatives, child development, adolescent mental health diagnosis and treatment, and the

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collateral consequences of juvenile adjudications.

B. For felony cases and sex offense cases:
   1) Have at least one year of juvenile law practice experience;
   2) Have handled at least 10 juvenile cases to conclusion;
   3) Have tried at least 5 contested juvenile hearings (including but not limited to: detention hearings, evidentiary hearings, adjudication hearings, and dispositional hearings);
   4) Have attended in the last three years at least four hours of CLE credit on two or more of the following topics related to juvenile defense including training and education regarding placement options and dispositions, child development, adolescent mental health diagnosis and treatment, and the collateral consequences of juvenile adjudications;
   5) Provide a letter explaining reasons for interest in and qualifications for representing juveniles in felony and sex offense cases; and
   6) Have submitted to the Commission three letters of reference from attorneys with whom the applicant does not practice, that assert that the applicant is qualified to represent juveniles in felony and sex offenses cases. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.

C. For Competency to Stand Trial Hearings and Bindover Hearings:
   1) Have at least two years of juvenile law practice experience;
   2) Have handled at least 20 juvenile cases to conclusion in the past ten years;
   3) Have tried at least 10 contested juvenile hearings (including but not limited to: detention hearings, evidentiary hearings, adjudication hearings, and dispositional hearings in the past ten years);
   4) Have attended in the last three years at least eight hours of CLE credit that cover all of the following topics devoted to juvenile defense including training and education regarding placement options and dispositional alternatives, child development, adolescent mental health diagnosis and treatment, issues and case law related competency, bindover procedures, and the collateral consequences of juvenile adjudications;
   5) Provide a letter explaining reasons for interest in and qualifications for representing juveniles in competency and bind-over hearings; and
   6) Have submitted to the Commission three letters of reference from attorneys with whom the applicant does not practice, that assert that the applicant is qualified to represent juveniles in competency and bind-over hearings. The

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letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.

7. **Protective Custody Matters.** In order to be rostered to represent parents in protective custody cases an attorney must:

   A. Have at least one year of criminal or civil law experience;
   B. Have conducted at least four contested hearings within the last five years;
   C. Have attended in the last three years at least four hours of CLE credit on topics related to the representation of parents in protective custody proceedings;
   D. Provide a letter explaining reasons for interest in and qualifications for representing parents in protective custody proceedings; and
   E. Have submitted to the Commission three letters of reference from attorneys with whom the applicant does not practice, that assert that the applicant is qualified to represent parents in protective custody. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.
   F. If a Petition to Terminate Parental Rights is filed and the attorney of record has not previously tried as a first or second chair a termination of parental rights hearing then the attorney of record must file a request with the MCILS for a more experienced attorney to serve as a second chair to assist the attorney of record in preparation of and with the termination of parental rights hearing.

8. **Involuntary Commitment.** In order to be rostered for Involuntary Commitment cases an attorney must:

   A. Have at least one year of criminal or civil law practice experience;
   B. Have conducted at least four contested hearings within the last five years;
   C. Have attended in the last three years at least four hours of CLE credit on topics devoted to the representation of individuals with mental health issues, including training and education regarding placement options and dispositions, mental health diagnosis and treatment and the collateral consequences of involuntary commitments;
   D. Provide a letter explaining reasons for interest in and qualifications for representing individuals facing involuntary commitment; and
   E. Have submitted to the Commission three letters of reference from attorneys with whom the applicant does not practice, that assert that the applicant is qualified to

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represent individuals facing involuntary commitment. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.

SECTION 4. Waiver of Certain Eligibility Requirements

1. An attorney who wishes to receive assignments for one or more of the specialized case types listed above but who does not meet both requirements of: (1) years of practice experience; and (2) trial or litigation experience, may seek a waiver of either, but not both, requirements. An attorney seeking a waiver must provide the Executive Director, or his or her designee, with written information explaining the need for a waiver and the attorney's experience and qualifications to provide representation to the indigent people whose charges or litigation matters are covered by this rule.

2. An attorney may apply for a conditional waiver if additional time is needed to meet CLE requirements.

3. The Executive Director, or his or her designee, may consider other litigation experience, total years of practice, and regional conditions and needs in granting or denying a waiver to any particular attorney.

AUTHORITY: 4 M.R.S.A. §§ 1804(2)(B), (2)(G) and (3)(E)

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