

Maine Commission on Indigent Legal Services

Proposed Rule: Chapter 3. Eligibility Requirements for Specialized Case Types.

Response to Public Comments

1.) Enactment of the panel rules should be postponed or there should be some type of staged/phased in role out of the rules. Comments made by Neale Duffet, David Mitchell (President of Maine Association of Criminal Defense Lawyers, writing and speaking on behalf of the Association), Sarah Churchill, Eric Columber (writing and speaking on behalf of the Board of Governors of the Maine State Bar Association), John Zink, Amy Fairfield and Anthony Beardsley (President of the Hancock County Bar Association, writing on behalf of the Association).

MCILS Response:

Under its enacting legislation, the Commission is required to promulgate standards “prescribing minimum experience, training and other qualifications for contract and assigned counsel,” 4 M.R.S.A. § 1804(2)(C), and has a duty to “establish minimum qualifications to ensure that attorneys are qualified and capable of providing quality representation in the case types to which they are assigned, recognizing that quality representation in each of these types of cases requires counsel with experience and specialized training in that field.” 4 M.R.S.A. § 1803(4)(E). Given this legislative mandate, the Commission believes it is our duty to move forward with the proposed rule at this time.

As a practical matter, the Commission’s small staff will not be able to implement the proposed rule immediately upon its adoption, but will have to implement the various specialized panels over time. In addition, implementation will require consultation with court personnel regarding the use of new specialized panel rosters. The Commission staff plans to create specialized panels over time to avoid workflow disruption for both the Commission and the court system.

2.) The length of the look-back periods in reference to trial experience should be increased/extended or made lifetime. Comments made by David Mitchell, William Pagnano, Dennis Mahar, Donald Carter, Kimberly Scott, Julio DeSanctis, and Joseph Wroblewski.

- a.) There are not enough trials taking place. Comments made by Joseph Mekonis, Sarah Churchill, Eric Columber, Donald Carter, Amy Fairfield, Philip Notis, Lawrence Goodglass, and Joseph Wroblewski.

- b.) Courts encourage resolution without trial. Comments made by Eric Columber, Donald Carter, and Lawrence Goodglass.
- c.) The client controls the decision for plea or trial, and we do not want to create an incentive for attorneys to push their clients into trial. Comments made by Joseph Mekonis, John Zink, John Alsop, Lawrence Goodglass and Joseph Wroblewski.
- d.) Massachusetts has a system set up based on training and trial experience. Comments made by Barry Pretzel.
- e.) St. Louis has both ADAs and PDs train on misdemeanors before advancing to felonies. Comments made by Robert Ruffner (President of the Maine Indigent Defense Center, speaking on behalf of the Center).

MCILS Response:

The Commission recognizes the trend in Maine, and in other jurisdictions as well, toward fewer trials. In accord with this recognition, the Commission has modified the proposed rule to 1) lengthen the look back period from seven to ten years for serious criminal cases; and 2) either reduce the number of trials required to qualify for a given panel or expand the types of trials and contested hearings that qualify as requisite experience, or both.

The Commission understands that whether or not to proceed to trial is the client's decision to make. The Commission also believes that it would be a violation of an attorney's ethical obligation to advise a client to proceed to trial merely to bolster the attorney's credentials. That said, quality representation requires an attorneys who is prepared to proceed to trial and who is comfortable advising a client that trial is a viable option. Accordingly, the Commission believes that the trial experience requirements in the modified proposal are appropriate.

The rule does reflect a combination of training and trial experience requirements, although it is not the same as the Massachusetts system described in the comments.

The Commission has considered and declines to require specific trial experience before an attorney can be assigned to felony cases that are not on a specialized panel. The Commission believes that the proposed specialized panels accurately identify the cases that require more than the minimum requirements set out in Chapter 2 of the Commission rules.

3.) There is no appeal process or right of review provided within the rule.

Comments made by David Mitchell, William Pagnano, Clifford Strike, Sarah Churchill, and Julio DeSanctis.

MCILS Response:

As set forth in its implementing legislation, 4 M.R.S.A. § 1803(4)(J), the Commission is required to develop an administrative review and appeal process for attorneys who are aggrieved by a decision of the executive director. The Commission believes that a comprehensive rule addressed specifically to administrative review and appeal is the better way to address this issue and development of such a comprehensive rule is on the Commission's rule-making agenda.

4.) The waiver rule gives the Executive Director excessive discretion. The waiver needs clarification or standards Comments made by David Mitchell, Clifford Strike, Anthony Beardsley, Sarah Churchill, Kimberly Scott and Linda Sparks.

MCILS Response:

The existence of the waiver provision recognizes the reality that some applications for specialized panels will present circumstances that must be addressed on a case by case basis. The Commission believes that the proposed waiver provision provides needed flexibility for the executive director to address the circumstances of a particular applicant. Moreover, the Commission does not see merit in trying to anticipate such circumstances within the structure of the rule and thereby risk impeding the executive director's ability to make appropriate decisions about whether to include attorneys on specialized panels.

5.) The waiver will swallow the rule or become the rule. Comments made by David Mitchell, Eric Columber, Amy Fairfield, and Robert Van Horn.

- a.) There is a need for a conditional waiver to address needing more time to complete CLE requirements. Comments made by Sarah Churchill and Amy Fairfield.
- b.) The waiver does not apply to CLE requirements. Comments made by William Pagnano.

MCILS Response:

To avoid the concern that the waiver will swallow or become the rule, the Commission has modified the proposed rule to ensure that more attorneys will meet the specialized panel requirements. The Commission has also modified the proposed rule to provide for a conditional waiver that allows an attorney time to meet the proposed CLE requirements.

6.) New attorneys will not be able to accept cases or practice. Comments made by David Mitchell, Joseph Mekonis, Kimberly Scott, Michael Tadenev and Heather Staples.

MCILS Response:

See response to comment # 7.

Qualifications to receive assignments in cases not governed by specialized panels are set forth in Chapter 2 of the Commission rules. It is not correct to say that attorneys without specific practice experience will not be able to accept indigent assignments because those attorneys will be able to handle cases not covered by the specialized panels.

7.) The types of cases not covered by the specialized panels do not generate enough trials to progress up the panels. Comments made by Sarah Churchill, Donald Carter and Kimberly Scott.

MCILS Response:

Felonies that would continue to be governed by Chapter 2 include most burglaries, all theft offenses, most drug offenses, motor vehicle felonies excluding OUI and manslaughter, and almost all misdemeanors that become felonies based on the existence of two prior offenses of the same nature. Misdemeanors other than Sex Offenses, OUI and Domestic Violence Offenses would continue to be governed by the Chapter 2. Given that these cases remain outside the scope of the proposed rule, and given the modifications to the proposed rule made by the Commission, the Commission believes that attorneys will be able to build up the body of experience necessary to become qualified for the specialized panels.

8.) There are training requirements, but no training are set up. CLE requirements will create a burden. Comments made by David Mitchell, William Pagnano, Eric Columer, Dennis Mahar, Amy Fairfield, Kimberly Scott, Robert Marks, Clifford Strike, Sarah Churchill, Julio DeSanctis, and Linda Sparks.

MCILS Response:

The Commission fully understands that it cannot impose training requirements that attorneys have no ability to meet. As stated above, the specialized panels will take time to implement. The Commission has the ability to provide its own trainings and intends to do so. The Commission also intends to work with other entities that provide attorney training in the relevant practice areas to assure that the necessary training is available. Finally, the Commission has proposed a modified waiver provision that allows attorneys time to obtain the required CLE.

The Commission believes that, often, specific CLE credits will satisfy multiple requirements, such as the CLE requirement imposed by the Board of Overseers of the Bar and the CLE requirements of both this rule and Chapter 2. Accordingly, the Commission

believes that attorneys will be able to satisfy the CLE requirements under this rule without undue burden.

9.) There will be an issue in rural areas of not having enough attorneys left on the lists once these requirements are imposed. There are not enough trials in rural counties for attorneys to meet these requirements. Rural attorneys may decide that the requirements are too burdensome. There will be an access to justice issue in these areas. Comments made by David Mitchell, William Pagnano, Eric Columer, Dennis Mahar, Matthew Foster, Kimberly Scott, John Alsop, Jeffrey Lovit (Washington County Bar Association), Clifford Strike, Robert Van Horn and Sarah Churchill.

MCILS Response:

Some commentators spoke about Maine’s tradition of facilitating a new lawyer’s move to a rural area by allowing a lawyer to establish and grow a new practice through the financial support obtained through the acceptance of assignments in indigent cases. At least one person spoke of new lawyers “sinking or swimming” and another stated that the new lawyers “did their best” for their clients. The Commission heard from solo practitioners who sought to continue that tradition and, in the words of one civil lawyer who intended to seek assignment “as an important means of making myself known in the community.” While the Commission respects all lawyers’ desire to represent the indigent and, in particular, rural lawyers’ proven commitment to represent the indigent, the Commission recognizes that it is not the purpose of the indigent legal services system to merely provide financial support for lawyers seeking to establish or grow a practice wherever they be situated in the State. The Commission is obligated to work to ensure the quality of a lawyer’s representation and cannot sacrifice that obligation in favor of simply providing financial support to new lawyers. Nevertheless, the Commission has recognized that issues specific to rural areas exist, has considered the concerns expressed, and has modified the rule accordingly. The Commission believes that with these modifications, the rule can be implemented without depriving any area of the state of the number of attorneys necessary to provide indigent legal services.

10.) The rule needs to be applied fairly and justly across the state. The rule needs to accommodate both urban and rural areas. Comments made by David Mitchell, Eric Columer, Robert Van Horn, Kimberly Scott, Jeffrey Lovit, Bernard Broder, Clifford Strike and Sarah Churchill.

- a.) Solve the problem by bringing in more experience lawyers as consultants. Comments made by Edwin Chester and Bernard Broder.
- b.) Importing urban attorneys to rural areas will cause the rural attorneys to stop doing this work. Comments made by Eric Columer and Jeffrey Lovit.
- c.) Importing attorneys will drive up the costs of the system. Comments made by Eric Columer, Jeffrey Lovit, Catherine Haynes, and Bernard Broder.

MCILS Response:

See the response to comment # 9.

The comments reflect different views on the wisdom assigning counsel from areas with more attorneys to address a shortage of attorneys in a specific rural locale. The Commission is mindful of its limited budget and seeks to maintain an adequate number of eligible attorneys in every part of the state. It has modified the proposed rule, at least partly, with this issue in mind.

11.) The rules do not include or are silent about requirements for Lawyer of the Day and handling Appeals. Comments made by David Mitchell, Barry Pretzel, Kimberly Scott, Hunter Tzovarras and Jeffrey Lovit.

MCILS Response:

The Commission understands that lawyer of the day and appeal representation are important aspects of indigent legal services. The proposed rule, however, deals with the vast majority of serious and complex indigent legal services and is the appropriate next step in fulfilling the Commission's legislative mandate.

The Commission does not intend to apply this rule to lawyer of the day representation. Nevertheless, the Commission staff maintains authority over the Lawyer of the Day rosters under Chapter 2 and can use that authority to ensure quality Lawyer of the Day representation until this area is addressed more formally. This applies to assignments for representation on appeal as well.

12.) The letters of reference requirements are too burdensome on the attorneys and MCILS staff. Comments made by William Pagnano, Catherine Haynes, Linda Sparks and Anthony Beardsley.

- a.) Using a subjective evaluation process of each attorney would be a better system, but there is no time or staffing to be able to do that. Comments made by Sarah Churchill and Hunter Tzovarras.
- b.) Will attorneys have to get multiple letters of reference for each panel they are applying for? Comments made by William Pagnano.
- c.) Instead of asking for letters of reference a standardized evaluation form should be developed by MCILS and used. Comments made by Edwin Chester and the CPJJ Section of MSBA.

MCILS Response:

Details of the letter of reference process are best left to the judgment of the Commission staff, which must implement the rule in a manner that allows it to manage its

workload. The staff will also be cognizant of the burden placed on attorneys who are asked to prepare and submit references.

A completely subjective process that calls for detailed evaluation of each attorney may have some merit, but the Commission agrees that its staff does not have the resources to undertake such a review.

The Commission favors letters of reference over standardized evaluation forms because the former, having to be composed from scratch, will likely provide a more nuanced insight into attorney qualifications, although the Commission understands that this is not guaranteed.

13.) Will attorneys have to write separate letters of interest for each panel they are applying for? Comments made by William Pagnano and Anthony Beardsley (President of the Hancock County Bar Association).

- a.) Will self-certification of interest in and qualification for a particular panel by lawyers be sufficient? Comment made by William Pagnano.
- b.) How will an attorney demonstrate knowledge and familiarity with evidentiary issues such as forensic testing, mental health evidence, and eye witness identification? Comment made by Anthony Beardsley.

MCILS Response:

Again, details of implementation are best left to the Commission staff.

The Commission expects applications to be evaluated as a complete package, within which an attorney's self-certification will be a part.

Attorneys are trained advocates who, if they possess knowledge and familiarity with relevant aspects of complex cases, should be able to demonstrate the same in a clear and concise fashion.

14.) The rules should not cause obstacles or be stumbling blocks for attorneys. The rule risks diminishing the pool of attorneys so that there will not be enough attorneys in the system to do the work. Comments made by Sarah Churchill, William Pagnano, Matthew Foster, Barry Pretzel, Hunter Tzovarras, and Bernard Broder.

- a.) Attorneys already have the Overseers requirements. Comments made by Matthew Foster and Philip Notis.

MCILS Response:

The Commission has recognized the need to maintain an adequate pool of attorneys in its modifications to the proposed rule.

The Legislature is presumed to have been aware that attorney practice is governed by the Maine Bar Rules and the Maine Rules of Professional Conduct. Accordingly, the requirements set forth in the Commission's implementing legislation must be interpreted as calling for qualification standards for indigent legal services that go beyond the requirements that apply to law practice in general.

15.) The number of years of practice is not the best indicator of an attorney's skill.

Look at number of cases or type of cases handled. Comments made by Sarah Churchill, Eric Columber, Paul Thibeault, John Alsop, Jeffrey Lovit, Bernard Broder and Anthony Beardsley.

- a.) How will years of practice be defined and what type of practice will count?

Comment made by Paul Thibeault.

MCILS Response:

While it is true that years in practice, and experience generally, do not guarantee that an attorney will provide quality representation, the Commission believes that experience is a necessary component of any attempt to ensure quality representation. The Commission takes notice of the fact that the Maine State Bar Association, for whom Eric Columber was speaking, considers years of practice experience to be relevant to whether the MSBA will recommend a lawyer in a civil matter through its lawyer referral service. The MSBA will not recommend a lawyer to a person who seeks a recommendation from the MSBA until that lawyer has practiced for at least 24 months in Maine. The MSBA also has specific additional criteria and experience requirements for specialized types of cases, such as civil rights cases. Through its assignment of counsel, the Commission does more than simply recommend a lawyer. The Commission essentially hires a lawyer to represent an indigent person who by definition faces the possibility of incarceration or loss of some other fundamental liberty. The Commission believes that it goes without saying that there is a correlation, although not exact, between the number of years of practice experience and a lawyer's ability to provide high quality representation to a client. It is important to note that the years of practice experience does not apply to the ability to take any assigned case, but applies only to the specialized case types covered by this rule. Unlike the MSBA rules regarding the mere referral of a lawyer, the Commission's rules are more relaxed and actually permit a newly-licensed attorney to accept assignments for a large number of cases to represent people who by definition face the possibility of jail or the loss of some other fundamental liberty. Moreover, the Commission staff does not have the ability to analyze the individual case experience of

every lawyer seeking specialized case assignments. The Commission expects, however, such experience to be relevant to any waiver request.

Again, details regarding implementation of the rule are best left to the Commission staff.

16.) Set up Resource Councils or Think Tanks in each county to review attorney qualifications and waiver requests. Comments made by Sarah Churchill and Amy Fairfield.

MCILS Response:

While this suggestion may merit consideration in the future, the Commission currently does not have the resources to expand its structure in the manner suggested and believes that the proposed rule is the most practical way to meet its responsibilities in a timely manner.

17.) Set up a skill based evaluation without regard to subject matter. Comments made by Justin Andrus.

MCILS Response:

As stated above, a regime based on a subjective evaluation of each attorney's skill set is beyond the Commission's ability to implement with its current resources. Moreover, not all skills are easily transferrable to these specialized case types without some foundation of experience in the relevant practice area.

18.) Should set up a mentoring or trial coach program or second chairing. Comments made by Joseph Mekonis, Edwin Chester, Eric Columber, Robert Van Horn, Walter McKee, and Philip Notis.

MCILS Response:

The Commission is open to second chair representation as a method to gain experience, and for the homicide panel, it is required for attorneys who have not previously tried a homicide case.

An internal law firm mentoring system, as suggested by Mr. McKee, is not available to a sufficient number of lawyers to merit explicit inclusion in the rule, but it would be relevant to a waiver request. Mentoring and trial coaching in general are good ideas that merit consideration but not, in the Commission's view, as a substitute for the proposed rule.

19.) Must have a rational approach to standards. Standards are necessary to provide quality. Experience is important to advising clients. Comments made by Zach Heiden (MCLU).

MCILS Response:

As stated above, the Commission believes that the proposed rule is the best avenue for ensuring quality and satisfying the Commission's legislative mandate.

20.) What will happen to "holdover cases" where an attorney is handling a case currently that they are no longer qualified to handle under the rules? What about repeat clients whose subsequent charge falls under a panel that the attorney is not qualified for? Will this lead to Bar complaints or affect the number or result of post conviction reviews claims of ineffective assistance of counsel?

Comments made by David Mitchell, Sarah Churchill, Matthew Foster, Amy Fairfield, Thomas Berry, and Jeffrey Lovit (Secretary of the Washington county Bar Association, writing on behalf of the Association).

MCILS Response:

In the Commission's view, neither adoption of the rule, nor the staff's final implementation of any specialized panel, will affect then existing assignments. The specialized panel rosters will be used for assignments made on or after the implementation date of that panel.

This rule addresses the Legislature's mandate that the Commission ensure quality representation by attorneys with experience and training in the practice areas for which they receive assignments. Accordingly, the Commission seeks to provide representation at a level well above the degree of competence set forth as the minimum required by the Rules of Professional Conduct or the court standard for effective assistance of counsel. Because the Commission's aim is to exceed these minimum standards, the Commission does not see merit to the argument that continuing representation on a case to which an attorney may not meet the qualifications of a specialized panel translates *ipso facto* into an ethical violation or ineffective assistance of counsel.

Of course, the Commission cannot control whether others might make such claims, but the Commission is not prepared to disregard its legislative mandate because the practicalities of implementing standards may prompt some individuals to raise such claims.

There may well be instances where an attorney will not be able to represent a former client who is subject to a new, more serious charge, but this concern is not sufficient to deter moving forward with the rule.

21.) The number of trials is not the best indicator of an attorney’s skill. Need to broaden the definition to include things like motion practice, CLEs, attending a trial college. Comments made by David Mitchell, William Pagnano, Justin Andrus, Eric Columer, Donald Carter, Robert Van Horn, Thomas Berry, Sarah Churchill, Hunter Tzovarras, Julio DeSanctis, and Linda Sparks,

MCILS Response:

The Commission notes that when asked specifically at the public hearing whether trial experience was irrelevant to the qualification of a lawyer to provide high-quality representation to a person charged with a serious or complicated crime, no commentators stated that trial experience was irrelevant. While trial experience is not necessarily the best indicator of a lawyer’s skills, trial skills that come from experience are important for attorneys providing indigent legal services to have, especially in the most serious and complicated cases. The prosecutors for the State in the most serious and complicated criminal cases have years of practice experience and a great deal of specific trial experience, especially in the prosecution of homicide cases. Although the Commission does not believe that it can necessarily duplicate the prosecution’s experience in all defense attorneys, the Commission believes that a criminal defendant facing years in prison should not have to be concerned about whether his or her lawyer will be distracted by understanding and executing the ordinary mechanics of a trial, such as jury selection, introducing evidence, or addressing a jury. Again, it is important to note that this rule applies only to serious and complicated cases and that lawyers will be eligible to accept assignments for a large number of cases without having had specific, or any, prior trial experience. In addition, the Commission’s modification of the proposed rule addresses this comment by reducing the trial experience requirements somewhat, making increased reference to contested hearings as qualifying experience, and defining the term “contested hearing.”

22.) Juvenile cases are not that different. Should not require a number of cases before get more serious cases. Comments made by Anthony Beardsley.

MCILS Response:

The Commission disagrees, and continues to believe that juvenile representation presents different issues from adult criminal defense, particularly regarding the relationship between assessment and treatment and case outcome. Accordingly, the Commission believes that experience in juvenile cases is necessary for those attorneys who want to progress to cases involving more serious juvenile offenses.

24.) The rule is redundant because the bar rules require attorneys to be competent before they accept a case. Comments made by Kimberly Scott.

MCILS Response:

As stated above, the Commission's mandate is to provide quality representation that is above the level of minimum competence required by the Rules of Professional Conduct.

25.) The rule will not weed out bad lawyers. Comments made by Kimberly Scott

MCILS Response:

Neither this rule, nor any other single initiative will ensure quality representation and a high level of competence in every case. Nevertheless, the Commission believes that the proposed rule is a necessary and substantial step in that direction and can be combined, over time, with other initiatives to move closer to the goal set forth by the Legislature.

26.) Need standards for misdemeanors as well. Comments made by Kimberly Scott

MCILS Response:

Chapter 2 of the Commission rules sets forth the minimum requirements for cases that do not fall within this rule on specialized case types. The Commission believes that, in combination, Chapter 2 and this rule strike the appropriate balance between the need to ensure quality and experience in specialized cases and the need to allow lawyers entering the system to gain experience and progress toward more specialized cases.

27.) Judges should be the gatekeepers – they do a good job. Comments made by John Alsop, Linda Sparks and Heather Staples.

MCILS Response:

The current procedure calls for courts to make the initial assignment and the Commission to either approve that assignment or substitute counsel. The Commission appreciates the cooperation of the courts in this endeavor. The Legislature has given the Commission, however, ultimate authority over the assignment of counsel. In addition, the Commission does not disagree that seasoned judges often give attention to serious cases and select appropriate counsel for those cases. Given the workload of the courts, however, not every case requiring specialized skills can get, or does get, such attention. The rosters for specialized case types that will be created by under the proposed rule will be a valuable guide to judges and clerks making initial assignments and to the Commission staff that is required to review and approve such assignments.

28.) Standards are needed for second chair on murder cases. Comments made by Clifford Strike.

MCILS Response:

This comment addresses a detail of implementation that is best addressed by Commission staff. The Commission expects, however, that second chair assignments will be made on a case by case basis in consultation with lead counsel.

29.) Sex offense requirements should be more stringent than serious violent felonies.

Comments made by Clifford Strike.

MCILS Response:

The modified proposed rule does apply more stringent standards to sex offense cases than serious violent felony cases.

30.) Lower OUI and DV trial requirements. Comments made by Clifford Strike.

MCILS Response:

The proposed rule has been modified to eliminate the OUI panel requirement that an attorney had conducted at least one jury trial, and to extend the time to satisfy the trial and contested hearing requirement for Domestic Violence cases.

31.) Need both higher pay and more available cases to bring in new attorneys.

Comments made by Clifford Strike.

MCILS Response:

As stated above, the Commission believes that there are sufficient cases not covered by this rule to allow attorneys to gain the experience needed to progress onto specialized panels. The rate of pay for assigned counsel is beyond the scope of this rule.

32.) Look at other states like MA or the CJA application process. Comments made by Barry Pretzel and Hunter Tzovarras.

MCILS Response:

The Commission has considered this recommendation and the information that has been provided regarding standards created by other indigent legal services systems,

but believes that the proposed rule is in accord with its legislative mandate and the unique circumstance of Maine.

33.) Teach trial skills rather than require trial experience. Comments made by Philip Notis and Lawrence Goodglass.

MCILS Response:

Through its CLE requirements in this rule and in Chapter 2, and in accord with its legislative mandate to provide training to lawyers, the Commission recognizes the value and necessity of trial skills training. The Commission believes, however, that trial experience is a necessary component of quality representation, particularly in the most serious specialized case types.

34.) Should allow homicide trials to lawyers who haven't had one. Comments made by Sarah Churchill.

MCILS Response:

The proposed rule does allow an attorney to be assigned to a homicide case without having previously tried a homicide case as first chair. Such attorneys must, however, have participated in a homicide case as second chair. The Commission believes that the experience and familiarity gained as second chair is vital to lawyers given the responsibility of acting as lead counsel in a homicide case.

35.) Cases have multiple charges that may fit under multiple panels. Comments made by David Mitchell, William Pagnano, and Joseph Mekonis, Julio DeSanctis

MCILS Response:

In general, attorneys qualified for a panel that governs the most serious offense will likely qualify to the other offenses in a multi-charge case. This will not always be the case, however, and will be a matter that the Commission staff will have to address in the implementation and assignment approval process.

36.) Reduce the Specialized Panels to only (1) Felonies (2) Misdemeanors (3) Protective Custody and (4) Involuntary Commitments. Comments made by Anthony Beardsley.

MCILS Response:

The Commission has considered this suggestion, but believes that the proposed rule identifies the appropriate number and type of specialized cases.

37.) The proposed rule should require the assignment of a second chair to a juvenile case involving Bindover or Competency issues if the originally assigned counsel does not meet the qualification requirements. Comment made by the Child Protective and Juvenile Justice section of the Maine state Bar Association.

MCILS Response:

This comment suggests that competency and bindover issues in juvenile cases be treated in the same manner as the rule treats the filing of a Petition to Terminate Parental Rights in a child protective case. Unlike in a child protection proceeding where the termination petition may be filed after an attorney has handled a case for a year or more, bindover and competency issues in juvenile cases are likely to come to the fore much earlier in the case. In such cases, the Commission will be able to use its authority to substitute counsel early in the case without disrupting a longstanding attorney-client relationship. If these issues arise later in a case, the Commission maintains authority to assign a qualified second chair. The Commission believes that this flexibility should be maintained as it is in the proposed rule.