

**Chapter 2: STANDARDS FOR QUALIFICATIONS OF ROSTEREDASSIGNED
COUNSEL**

Summary: This chapter establishes the standards prescribing minimum experience, training and other qualifications for contract counsel and rosteredassigned counsel to be eligible to accept appointments-assignments to represent indigent people, who are eligible for a constitutionally-required attorney.

SECTION 1. Application

All attorneys wishing to accept case assignments by the Commission must complete an application in the manner prescribed by the Commission. The Commission will not act on an application until it is complete. No attorney will be assigned a case until that attorney completes an application and is placed on the roster of attorneys eligible to receive assignments. Rostered counsel means an attorney who meets all the qualifications to accept assignments from the Commission and is actually placed on the roster.

SECTION 1A. Qualifications for Previously Rostered Counsel at the Time These Amended Rules and Standards are Implemented.

The attorney shall demonstrate the necessary and sufficient experience and proficiency required to accept assignments as provided below:

1. Currently rostered counsel shall maintain their current status on rosters for the first year after the enactment of this rule. The Executive Director shall create an application for all currently rostered counsel to complete to demonstrate they meet all new eligibility requirements. After the first year following the enactment of these rules and standards, rostered counsel must comply with all eligibility requirements of this rule.
2. Any attorney not previously rostered to receive assignments from the Commission when this rule is enacted must comply with all requirements to be rostered.

SECTION 1B. General Eligibility Requirements

1. The Executive Director or their designee, shall have the sole discretion to make the determination if an attorney is qualified to be placed on a roster. In addition, the Executive Director or their designee, shall have the sole discretion, to grant or deny a waiver pursuant to, and in accordance with waiver of eligibility requirements. The Executive Director's decision to not roster an attorney may be appealed to the full Commission pursuant to 4 M.R.S.A. § 1804(3)(J) and

Commission Rule 94-649 Chapter 201.

2. The Executive Director or their designee, may, in their sole discretion, remove an attorney from a roster at any time if the attorney is not meeting the minimum qualifications and standards as determined by the Executive Director or their designee. This 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 their designee, to remove an attorney from any roster at any time.
3. All attorneys must comply with all standards, procedures, and rules of the Commission.
4. The Executive Director or their designee may deny the rostering of an attorney who meets the minimum qualifications necessary to be placed on a roster, including specialized rosters, if there are a sufficient number of rostered attorneys as determined by the Executive Director or their designee currently on the roster in the region the applicant attorney plans to practice.
5. A newly rostered attorney cannot be assigned a case until a rostered mentor has been assigned.

SECTION 1C. General Policies Applicable to All Rostered Counsel

1. Rostered counsel must register with the Commission annually in a manner prescribed by the Commission.
2. Rostered counsel must also comply with any Commission request, investigation or audit on any topic relating to the representation, including, complaints, time records, billing, financial practices, discovery in the matter, and pleadings or other filings. Rostered counsel shall provide other information that, in the view of the Executive Director or their designee, concerns the question of whether the attorney is fit to remain on the roster.
3. Rostered counsel shall not knowingly make a false statement of material fact or law to the court, the Commission, or a third person.
4. Rostered counsel must keep all clients, the Commission and the courts in which the attorney represents indigent clients apprised of the attorney's work telephone number and postal and electronic mail addresses.
5. Rostered counsel shall not accept any compensation or other consideration for assigned cases except through the Commission.
6. Rostered counsel must enter a new assignment into the Commission billing system within 5 days of receiving notice of the assignment

SECTION 2. Minimum Experience, Training, ~~A~~ and Other Eligibility Requirements to be Rostered

~~Any attorney wishing to accept case assignments from the Commission, serve as contract counsel or otherwise be approved by the Commission to accept assignments must satisfy the following conditions. Repealed.~~

~~1. Licensed To Practice Repealed.~~

- ~~a.) The attorney must be licensed to practice law in the State of Maine and be in good standing with the Maine Board of Overseers of the Bar. Repealed.~~
- ~~b.) The attorney must promptly inform the Commission, in writing, of any complaint against the attorney filed with the Maine Board of Overseers of the Bar that has been set for a grievance panel hearing or hearing before a single justice of the Supreme Judicial Court. Failure to comply with this requirement is grounds for removal from the roster. Repealed.~~
- ~~e.) The attorney must inform the Commission, in writing, within 5 days of any criminal charge filed against the attorney in any jurisdiction and promptly inform the Commission of any disposition of such charge. Failure to comply with this requirement is grounds for removal from the roster. Repealed.~~

2. Attorney Cooperation with Procedures and Monitoring

- ~~a. The attorney must register with the Commission annually in a manner prescribed by the Commission. Repealed.~~
- ~~b. The attorney must comply with all applicable Commission rules and procedures. Repealed.~~
- ~~c. Rostered counsel The attorney must cooperate comply with Commission monitoring, and performance evaluations, and provide information as requested regarding complaints or billing discrepancies. Failure to comply in a timely manner could result in the rostered counsel's vouchers not being paid and/or suspension from the roster(s). The attorney must also comply with any Commission investigation of complaints, billing discrepancies, or other information that, in the view of the Executive Director, concerns the question of whether the attorney is fit to remain on the roster. Except as pertains to indigent cases assigned to the attorney, the Executive Director cannot require an attorney to disclose information that is privileged or made confidential by statute, by court rule or by court order.~~

~~3. Rostered counsel must be in good standing with the Board of Overseers of the Bar and licensed to practice law in the State of Maine prior to being rostered.~~

~~4. Any attorney not previously rostered must satisfactorily complete a Commission-sponsored or Commission-approved training course in order to be eligible to receive assignments.~~

~~5. Attorneys applying to be rostered and rostered counsel must disclose any criminal convictions. The Executive Director or their designee shall use their discretion to~~

determine if the conviction disqualifies the applicant attorney.

6. An attorney applying to be rostered who has any pending disciplinary matters or pending criminal charges cannot be rostered until the outcome of the proceeding is concluded. The allegations and outcome of the proceeding must be considered by the Executive Director in deciding if the attorney is eligible to be rostered.

SECTION 3. Office, Telephone, and Electronic Mail

1. The attorney Rostered counsel must maintain an office or have the use of space that is reasonably accessible to clients and that permits the private discussion of confidential and other sensitive matters or the use of secure virtual office meetings.
2. The attorney Rostered counsel must maintain a telephone number, which shall be staffed by personnel available for answering telephone calls or an answering service, an answering machine or voicemail capability that ensures client confidentiality. Rostered counsel must be able to accept calls from correctional institutions in the counties in which they primarily practice and should accept such calls if available to speak with the client.
3. The attorney Rostered counsel must maintain a confidential working e-mail account as a means of receiving information from and providing information to the Commission, the Courts, and clients.
4. The attorney Rostered counsel must keep the Commission and the courts in which the attorney represents indigent clients apprised of the attorney's work telephone number and postal and electronic mail addresses. The attorney Rostered counsel must ensure that the court has the ability to contact the attorney by mail and by telephone.

SECTION 4. ~~Experience and Proficiency~~ Repealed.

~~The attorney shall demonstrate the necessary and sufficient experience and proficiency required to accept appointments as provided below.~~

1. Repealed.
2. ~~Any attorney not previously having been accepted to receive assignments from the Commission must satisfactorily complete a Commission-sponsored or Commission-approved training course for the area of the law for which the attorney is seeking to receive assignments, including but not limited to, criminal defense, juvenile defense, civil commitment, child protective, or emancipation prior to being placed on the roster and receiving assignments; or~~ Repealed.

3. ~~An attorney may be accepted for placement on the roster and receive assignments from the Commission without completing a Commission-sponsored or Commission-approved training course as provided above if the attorney demonstrates to the Commission a commitment to and proficiency in the practice of the area of the law for which the Attorney is willing to accept assignments over the course of at least the three years prior to receiving assignments from the Commission. Repealed.~~

SECTION 5. Training and CLE Requirements for Rostered Counsel

~~The attorney shall annually complete 8 hours of continuing legal education (CLE) approved by the Commission. Repealed.~~

~~The attorney shall meet any specific training requirements of any specialized panels. Repealed.~~

1. An attorney may be accepted for placement on a roster and receive assignments from the Commission without completing a Commission-sponsored or Commission-approved training course as provided above if the attorney demonstrates to the Commission a commitment to and proficiency in the practice of the area of the assignment.
2. At a minimum, rostered counsel shall annually complete 8 hours of continuing legal education (CLE) approved by the Commission.
 - A. These hours are not in addition to any other Commission CLE requirements but are included in any other Commission CLE requirements. CLE credits applicable to specialized panel CLE requirements may also satisfy this 8-hour CLE requirement.
 - B. Rostered counsel eligible to receive assignments in both criminal and child protection cases shall annually complete 8 hours of criminal law related CLE and 8 hours of child protection law CLE, but only if the Commission offers such CLE training.

SECTION 6. Removal or Suspension from the Roster

1. The Executive Director may remove indefinitely or suspend ~~an attorney a rostered counsel~~ from the roster completely or from the roster for ~~certain specialized~~ case types and court locations for any failure to comply with ~~any Commission this or any other Commission~~ rule or standard or in the interest of the Commission. In addition, the Executive Director may remove indefinitely or suspend ~~an attorney a rostered counsel~~ from the roster completely or from the roster for certain case types and court locations if the Executive Director determines ~~rostered counsel that the attorney~~ rostered counsel is no longer qualified to provide quality indigent legal services

~~based on the nature of any criminal charge or on investigation by the Executive Director or the Executive Director's designee of any complaint or other information.~~ The Executive Director's decision to remove or suspend an attorney from the roster shall be in writing and shall reflect the Executive Director's reasoning in a manner sufficient to inform the attorney and the public of the basis for the ~~Executive Director's action.~~ The Executive Director may consult with Commissioners in determining the appropriate action to be taken, if any.

2. Rostered counsel ~~Attorneys~~—removed indefinitely must re-apply to the Commission if they wish to receive assignments in the future. Rostered counsel ~~Attorneys~~—suspended from the roster need not re-apply; but must demonstrate compliance with any conditions made part of a suspension. Removal or suspension may also include a requirement that the attorney immediately identify to the Commission all open assigned cases and file a motion to withdraw in each case.
3. The Executive Director's decision to remove or suspend an attorney may be appealed to the full Commission pursuant to 4 M.R.S.A. § 1804(3)(J) and Commission Rule 94-649 Chapter 201.

SECTION 7. Affirmative Duty to Report Complaints or Potential Conflicts

1. Rostered counsel shall notify the Executive Director or their designee in writing within five business days of learning of any of the following:
 - a. Being summonsed, charged, or convicted of a crime, a rostered attorney must disclose in writing the summons, charge, conviction to MCILS. The Executive Director shall have the discretion to reassign any MCILS case currently assigned to the rostered attorney and/or suspend the rostered counsel from the roster(s). Rostered counsel has an ongoing obligation to keep the Executive Director or their designee apprised of the allegation and the outcome of said allegation
 - b. A rostered counsel who has been convicted of a Title 17-A, Chapter 45 (Drugs) or Title 29-A, § 2411 (OUI) or similar crimes in a different jurisdiction while rostered cannot receive any new assignments until the rostered counsel has completed a substance abuse evaluation and is engaged in any recommend counseling and confirmed that a referral has been made to the Maine Assistance Program for Lawyers and Judges.
 - c. A complaint has been filed against rostered counsel before the Maine Board of Overseers of the Bar or similar institution in any jurisdiction or court;
 - d. Rostered counsel is the subject of disciplinary action before any non-attorney professional licensing board or agency;
 - e. Rostered counsel's license to practice law has been suspended or terminated for any reason, including for administrative reasons such as non-payment of bar dues;

mandate the rostered counsel withdraw from those cases.

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

EFFECTIVE DATE:

June 25, 2010

AMENDED: