

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~~ assignments 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.

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 in the charging instrument 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~~ Major Felony. “~~Serious-Violent~~ Major Felony” means:
 - A. An offense under 17-A M.R.S.A. §§ 152-A (Aggravated Attempted Murder), 208 (Aggravated Assault), 208-B (Elevated Aggravated Assault), 208-C (Elevated

Aggravated Assault on a Pregnant Person), 301 (Kidnapping), 401(1)(B)(1), (2), or (3) (Burglary with a Firearm, Burglary with Intent to Inflict Bodily Harm, and Burglary with a Dangerous Weapon), 651 (Robbery), 802 (Arson), 803-A (Causing a Catastrophe), 1105-A (Aggravated Trafficking of Scheduled Drugs), 1105-B (Aggravated Trafficking of Counterfeit Drugs), and 1105-C (Aggravated Furnishing of Scheduled Drugs).

B. “~~Serious-Violent~~Major Felony” includes crimes involving substantially similar conduct in another jurisdiction.

C. “~~Serious-Violent~~Major 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:

A. An offense under 17-A M.R.S.A. §§ 251-259-A (Sexual Assaults), §§ 281-285 (Sexual Exploitation of Minors), § 556 (Incest), § 511(1)(D) (Violation of Privacy), § 852 (Aggravated Sex Trafficking), § 853 (Sex Trafficking), § 853-A (Engaging in Prostitution), § 853-B (Engaging a Prostitute), and § 855 (Patronizing Prostitution of Minor or Person with Mental Disability).

B. “Sex Offense” includes crimes involving substantially similar conduct in another jurisdiction.

C. “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 under 17-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. Murder and manslaughter-Homicide, including OUI manslaughter

B. Sex ~~e~~Offenses

C. ~~Serious-violent felonies~~-Major Felony

D. Operating ~~U~~nder the ~~I~~nfluence (OUI)

E. Domestic ~~V~~violence

F. Juvenile ~~D~~efense

G. Protective custody matters

H. Repealed.

- I. Appellate Panel
- J. Post-Conviction Review
- K. Bind-over Hearings
- L. Felonies
- M. Lawyer of the Day

6. Felony. "Felony" means any crime where the defendant could be sentenced to 1 year or more and otherwise not included in the definition of another specialized panel.
7. Rostered Counsel means an attorney who meets all the qualifications to accept assignments from the Commission and is actually placed on a roster.
8. Newly Rostered Counsel means an attorney not previously rostered to receive assignments from MCILS when these standards and rules are enacted.

SECTION 1A. Qualifications for Previously Rostered Counsel at the Time This Amended Rule is Implemented.

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 minimum experience, training, and other eligibility requirements. After the first year following the enactment of these rules and standards, rostered counsel must comply with all eligibility requirements for all the panels they are rostered on.

SECTION 2. Powers and Duties of the Executive Director

1. The Executive Director, or ~~his or her~~their designee, shall develop an application process for an attorney seeking ~~appointment~~assignment(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~~their designee in order to determine that the applicant meets all applicable qualification requirements.
2. The Executive Director, or ~~his or her~~their 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~~their 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~~ their 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 their ~~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~~ her ~~their~~ designee, to remove an attorney from any Specialized Case Type Roster at any time.

SECTION 3. Minimum Eligibility Requirements for Specialized Case Types.

1. **Murder and non OUI Manslaughter Homicide.** In order to be rostered for ~~homicide cases~~ Murder and non OUI Manslaughter cases for adult and juvenile clients an attorney must:

- ~~A. Have at least five years of criminal law practice experience; Repealed~~
- ~~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; Repealed~~
- ~~C. Have tried as first chair a homicide case in the last fifteen years, OR have tried as second chair at least one homicide case with an experienced homicide defense attorney within the past five years; Repealed~~
- ~~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; Repealed~~
- ~~E. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with homicide; and Repealed~~
- ~~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 letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author. Repealed~~

- G. Have at least five years of experience as a criminal defense attorney;
- H. Have been co-counsel on at least 3 Murder or non OUI Manslaughter cases;
- I. Have been an attorney of record on at least 5 jury trials of which the attorney has been lead counsel on 2 of the jury trials;
- J. Attend and complete the Commission minimum standards training for Murder and non OUI Manslaughter panel.
 - 1. If the Commission has not established a minimum standards training for Murder and non OUI Manslaughter panel, the attorney must complete 12 CLE hours addressing one the following topics within the previous 2 years: defense of homicides, forensic and scientific issues relating to DNA testing, fingerprint analysis, mental health issues, and eyewitness identification.
 - 2. These CLE requirements are only applicable if Commission-approved courses are provided in Maine that meet these requirements or if the Commission authorizes and pays for attendance, travel, 3 meals, accommodations, and 8 hours of daily pay at the hourly rate to attend an out of state CLE that meets all these requirements when such CLEs are not offered in Maine;
- K. Provide a letter explaining your reasons for interest in and qualifications for representing individuals charged with homicide. This letter must demonstrate a knowledge and familiarity with the evidentiary issues relevant to homicide cases, must demonstrate experience in the utilization of expert witnesses and investigators, must demonstrate experience with forensic and psychiatric evidence, must demonstrate experience with litigating suppression motions, and must demonstrate training or experience with eyewitness identification;
- L. Must submit to the Executive Director or their designee three letters of reference from attorneys with at least 10 years of experience and with whom the applicant does not practice, that assert the applicant is qualified to represent individuals charged with homicide and non OUI manslaughters.
- M. Additional Letters of reference shall also be submitted upon the request of the Executive Director or their designee; and
- N. Must recertify every year that all requirements are met to remain on the murder and non OUI manslaughter panel. Rostered Counsel who are on multiple specialized panel rosters must, in order to maintain eligibility for all panels, complete the CLE requirements for at least one of those panels each year. Rostered Counsel may not satisfy this requirement, however, by meeting the requirements of the same specialized panel two years in a row. Rostered counsel who are on a single specialized panel must meet the requirements of that panel each year.

1A. OUI Manslaughter. In order to be rostered for OUI Manslaughter cases for adult and juvenile clients an attorney must:

- A. Qualify for the Murder and non OUI Manslaughter for adult and juvenile panel and the OUI panel; and

B. Recertify every year that all requirements are met to remain on the OUI manslaughter panel. Rostered Counsel who are on multiple specialized panel rosters must, in order to maintain eligibility for all panels, complete the CLE requirements for at least one of those panels each year. Rostered Counsel may not satisfy this requirement, however, by meeting the requirements of the same specialized panel two years in a row. Rostered counsel who are on a single specialized panel must meet the requirements of that panel each year.

2. **Sex Offenses.** In order to be rostered for Ssex Offense cases for adult or juvenile clients an attorney must:

- ~~A. Have at least three years of criminal law practice experience; Repealed~~
- ~~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; Repealed~~
- ~~C. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with a sex offense; and Repealed~~
- ~~D. If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice asserting 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. Repealed~~
- ~~E. Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee. Repealed~~
- F. Have at least 4 years of experience as a criminal defense attorney;
- G. Have been co-counsel on at least 3 Sex Offender Registry and Notification Act (SORNA) registerable criminal Sex Offense cases or analogous juvenile offenses;
- H. Have completed to dismissal or sentencing a minimum of 50 felony assignments or analogous juvenile offenses;
- I. Have been an attorney of record in at least 1 jury trial;
- J. Attend and complete the Commission minimum standards training for Sex Offenses panel.
 - 1. If the Commission has not established a minimum standards training, the attorney must complete 6 CLE hours addressing at least 1 of the following topics within the previous 2 years: forensic and scientific issues relating to DNA testing, applicability of SORNA to criminal cases, cross-examination of the child witness, sexual assault forensic examinations, and eyewitness identification.
 - 2. These CLE requirements are only applicable if Commission-approved courses

are provided in Maine that meet these requirements or if the Commission authorizes and pays for attendance, travel, 3 meals, accommodations, and 8 hours of daily pay at the hourly rate to attend an out of state CLE that meets all these requirements when such CLEs are not offered in Maine;

K. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with a Sex Offense. This letter must demonstrate a knowledge and familiarity with the evidentiary issues relevant to sex offense cases, must demonstrate experience with litigating DNA issues, must demonstrate experience in the utilization of expert witnesses and investigators, must demonstrate experience with forensic and psychiatric evidence, must demonstrate experience with litigating suppression motions, and demonstrate training with eyewitness identification.

L. Three letters of reference from attorneys with whom the applicant does not practice shall also be submitted upon the request of the Executive Director or their designee if seeking a waiver; and

M. Must recertify every year that all requirements are met to remain on the Sex Offense panel. Rostered Counsel who are on multiple specialized panel rosters must, in order to maintain eligibility for all panels, complete the CLE requirements for at least one of those panels each year. Rostered Counsel may not satisfy this requirement, however, by meeting the requirements of the same specialized panel two years in a row. Rostered counsel who are on a single specialized panel must meet the requirements of that panel each year.

3. ~~Serious Violent Felonies~~Major Felonies. In order to be rostered for Major Felony serious violent felony cases for adult or juvenile clients an attorney must:

A. Have at least two years of criminal law practice experience; Repealed.

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; Repealed.

C. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with a serious violent felony; and Repealed.

D. If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice asserting 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. Repealed.

E. Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee. Repealed.

F. Have at least 3 years of experience as a criminal defense attorney;

G. Have been co-counsel on at least 5 Major Felony counsel cases;

- H. Have been attorney of record in at least 1 jury trial;
- I. Have completed to dismissal or sentencing a minimum of 25 felony cases.
- J. Attend and complete the Commission minimum standards training for Major Felony panel.
 - 1. If the Commission has not established a minimum standards training, the attorney must complete 6 CLE hours addressing at least 1 of the following topics within the previous 2 years: cross-examination of prosecution witnesses, chain of custody evidentiary issues, admission of medical records, and eyewitness.
 - 2. These CLE requirements are only applicable if Commission-approved courses are provided in Maine that meet these requirements or if the Commission authorizes and pays for attendance, travel, 3 meals, accommodations, and 8 hours of daily pay at the hourly rate to attend an out of state CLE that meets all these requirements when such CLEs are not offered in Maine;
- K. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with a Major Felony. The letter must demonstrate a knowledge and/or familiarity with the cross-examination of prosecution witnesses, chain of custody evidentiary issues, admission of medical records, and eyewitness identification.
- L. Three letters of reference from attorneys with whom the applicant does not practice shall also be submitted upon the request of the Executive Director or their designee if seeking a waiver; and
- M. Must recertify every year that all requirements are met to remain on the Major Felony panel. Rostered Counsel who are on multiple specialized panel rosters must, in order to maintain eligibility for all panels, complete the CLE requirements for at least one of those panels each year. Rostered Counsel may not satisfy this requirement, however, by meeting the requirements of the same specialized panel two years in a row. Rostered counsel who are on a single specialized panel must meet the requirements of that panel each year.

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

- ~~A. Have at least one year of criminal law practice experience; Repealed.~~
- ~~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; Repealed.~~
- ~~C. Have obtained in the last three years at least four hours of CLE credit on topics relevant particularly to OUI defense; Repealed.~~
- ~~D. Provide a letter explaining reasons for interest in and qualifications for representing~~

~~individuals charged with an OUI; and~~ Repealed.

- ~~E. If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice asserting 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.~~ Repealed.
- ~~F. Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.~~ Repealed.
- G. Have at least 1 year of experience as a criminal defense attorney;
- H. Have been an attorney of record in at least 1 jury trial;
- I. Attend and complete the Commission minimum standards training for OUI panel.
 - 1. If the Commission has not established a minimum standards training, the attorney must complete 6 CLE hours dedicated specifically to the defense of OUIs during the previous 2 years.
 - 2. These CLE requirements are only applicable if Commission-approved courses are provided in Maine that meet these requirements or if the Commission authorizes and pays for attendance, travel, 3 meals, accommodations, and 8 hours of daily pay at the hourly rate to attend an out of state CLE that meets all these requirements when such CLEs are not offered in Maine;
- J. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged OUIs. The letter must demonstrate a knowledge and/or familiarity with the cross-examination of prosecution witnesses;
- K. Three letters of reference from attorneys with whom the applicant does not practice shall also be submitted upon the request of the Executive Director or their designee if seeking a waiver; and
- L. Must recertify every year that all requirements are met to remain on the OUI panel. Rostered Counsel who are on multiple specialized panel rosters must, in order to maintain eligibility for all panels, complete the CLE requirements for at least one of those panels each year. Rostered Counsel may not satisfy this requirement, however, by meeting the requirements of the same specialized panel two years in a row. Rostered counsel who are on a single specialized panel must meet the requirements of that panel each year.

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

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

- 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;~~ Repealed.
- D. ~~Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with a domestic violence crime; and~~ Repealed.
- E. ~~If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice asserting 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.~~ Repealed.
- F. ~~Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.~~ Repealed.
- G. Have at least 1 year of experience as a criminal defense attorney;
- H. Have been the attorney of record for at least 1 jury trial;
- I. Attend and complete the Commission minimum standards training for Domestic Violence panel.
 - 1. If the Commission has not established a minimum standards training, the attorney must complete 6 CLE hours dedicated specifically to the defense of Domestic Violence cases in the previous 2 years.
 - 2. These CLE requirements are only applicable if Commission-approved courses are provided in Maine that meet these requirements or if the Commission authorizes and pays for attendance, travel, 3 meals, accommodations, and 8 hours of daily pay at the hourly rate to attend an out of state CLE that meets all these requirements when such CLEs are not offered in Maine;
- J. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged Domestic Violence allegations;
- K. Three letters of reference from attorneys with whom the applicant does not practice shall also be submitted upon the request of the Executive Director or their designee if seeking a waiver; and
- L. Must recertify every year that all requirements are met to remain on the Domestic Violence panel. Rostered Counsel who are on multiple specialized panel rosters must, in order to maintain eligibility for all panels, complete the CLE requirements for at least one of those panels each year. Rostered Counsel may not satisfy this requirement, however, by meeting the requirements of the same specialized panel two years in a row. Rostered counsel who are on a single specialized panel must meet the requirements of that panel each year.

6. **Juvenile Defense.** In order to be rostered ~~for felony, sex offense, and bind-over juvenile defense cases~~ to represent juveniles an attorney must:

A. Repealed.

~~B. For felony cases and sex offense cases: Repealed.~~

~~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) If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice asserting 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.~~

~~7) Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.~~

~~8) Upon notice from the State, whether formal or informal, that it may be seeking bind-over in the case, the attorney must immediately notify the Executive Director.~~

C. ~~For Bind-over Hearings: Repealed.~~

~~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, bind-over procedures, and the collateral consequences of juvenile adjudications;~~
- ~~5) Provide a letter explaining reasons for interest in and qualifications for representing juveniles in bind-over hearings; and~~
- ~~6) If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice asserting that the applicant is qualified to represent juveniles in bind-over hearings. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.~~
- ~~7) Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.~~

D. An attorney with less than 1-year experience must agree to work with a rostered mentored attorney for at least 18 months. The attorney will be provisionally rostered until the 18-month period is completed;

E. The attorney will be provisionally rostered until they have been co-counsel or lead counsel for at least 5 contested juvenile hearings, including but not limited to detention hearings, evidentiary hearings, adjudication hearings, and dispositional hearings. Provisionally rostered counsel must continue working with a rostered mentored attorney until this requirement is met even if the 18 month period referenced above has expired;

F. Prior to being provisionally rostered for juvenile assignments, the attorney must:

1. Attend and complete the Commission minimum standards training for juvenile defense panel.

a. If the Commission has not established a minimum standards training, the attorney must complete 6 CLE hours on two or more of the following topics within the previous 2 years: juvenile defense, placement options and dispositions for juveniles, child development, adolescent brain development, adolescent mental health diagnosis and treatment, and the collateral consequences of juvenile adjudications plus 1 CLE hour on ethics related to the defense of juveniles.

b. These CLE requirements are only applicable if Commission-approved courses are provided in Maine that meet these

requirements or if the Commission authorizes and pays for attendance, travel, 3 meals, accommodations, and 8 hours of daily pay at the hourly rate to attend an out of state CLE that meets all these requirements when such CLEs are not offered in Maine;

2. Provide a letter explaining reasons for interest in and qualifications for representing juveniles; and

3. Three letters of reference from attorneys with whom the applicant does not practice shall also be submitted upon the request of the Executive Director or their designee if seeking a waiver; and

G. Must recertify every year that all requirements are met to remain on the juvenile defense panel. Rostered Counsel who are on multiple specialized panel rosters must, in order to maintain eligibility for all panels, complete the CLE requirements for at least one of those panels each year. Rostered Counsel may not satisfy this requirement, however, by meeting the requirements of the same specialized panel two years in a row. Rostered counsel who are on a single specialized panel must meet the requirements of that panel each year

6A. Bind-over hearings

1. Rostered Counsel representing a juvenile who receives notice from the State, whether formal or informal, that it may be seeking bind-over, must immediately notify the Executive Director or their designee.

2. To be eligible to continue to represent the juvenile, the Rostered Counsel must meet the following requirements. If the Rostered Counsel does not meet the requirements, then the Executive Director or their designee shall assign a second Rostered Counsel who does meet the requirements. Two attorneys shall be assigned to every bind-over hearing. One attorney must be a bind-over Rostered Counsel and one attorney must be on the adult murder, adult Sex Offense or adult Major Felony panel. The same attorney can meet both qualifications but there must be at least two attorneys. The minimum requirements for at least 1 of the attorneys are:

a. Have been rostered to represent juveniles for at least 5 years;

b. Have been Rostered Counsel on at least 50 juvenile cases to conclusion;

c. Have been co-counsel or lead counsel for at least 10 contested juvenile hearings, including but not limited to detention hearings, evidentiary hearings, adjudication hearings, and dispositional hearings; and

d. Attend and complete the Commission minimum standards training for the bind-over hearings panel.

1. If the Commission has not established a minimum standards training, the attorney must have attended in the previous five years at least 17 CLE hours that cover 4 of the following topics: juvenile defense, placement options and dispositional alternatives for juveniles, child development, adolescent

mental health diagnosis and treatment, issues and case law related to adolescent competency, bind-over procedures, and the collateral consequences of juvenile adjudications plus 1 CLE hour on adolescent brain development.

2. These CLE requirements are only applicable if the Commission offers Commission-approved courses that meet these requirements or if the Commission authorizes and pays for attendance, travel, 3 meals, accommodations, and 8 hours of daily pay at the hourly rate to attend an out of state CLE that meets all these requirements when such CLEs are not offered in Maine.

e. Must recertify every year that all requirements are met to remain on the bind-over hearings panel. Rostered Counsel who are on multiple specialized panel rosters must, in order to maintain eligibility for all panels, complete the CLE requirements for at least one of those panels each year. Rostered Counsel may not satisfy this requirement, however, by meeting the requirements of the same specialized panel two years in a row. Rostered counsel who are on a single specialized panel must meet the requirements of that panel each year.

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

A. Repealed.

B. Have conducted at least four contested hearings in civil or criminal cases within the last-previous five years;

C. Have attended in the last-previous 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. If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice asserting that the applicant is qualified to represent parents in protective custody cases. The letters of reference must be submitted directly to the Executive Director, or his or her their designee, by the author.

E-1. Letters of reference shall also be submitted upon the request of the Executive Director, or his or her their designee.

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, or has less than 6 months of child protection experience, then the attorney of record must file a request with the MCHS-Commission for a more experienced attorney to serve as a second chair to assist the attorney of record with the termination of parental rights hearing.

G. In order to be eligible for protective custody matters, Rostered Counsel must provide satisfactory proof of attendance and observation at the following proceedings prior to representing clients:

1. Two Preliminary Protection Order waivers,
2. One contested Preliminary Protection Order Hearing,
3. Two Jeopardy agreement on the record,
4. One contested Jeopardy Hearing,
5. One Termination of Parental Rights consent on the record, and
6. One contested Termination of Parental Rights Hearing.

H. Upon accepting Commission assignments, Rostered Counsel shall have co-counsel for at least two contested hearings prior to representing a client on their own in a contested hearing. If necessary, Rostered Counsel should consult with a mentor/resource counsel or request experienced co-counsel to ensure quality representation of the parent.

I. Rostered Counsel shall annually complete 8 hours of continuing legal education (CLE) approved by the Commission and related to child protection law and issues, including but not limited to mental health, substance abuse, parental rights and responsibilities, domestic violence, intellectual disabilities, criminal conduct, psychological evaluations, and expert witnesses.

J. Must recertify every year that all requirements are met to remain on the protective custody panel. Rostered Counsel who are on multiple specialized panel rosters must, in order to maintain eligibility for all panels, complete the CLE requirements for at least one of those panels each year. Rostered Counsel may not satisfy this requirement, however, by meeting the requirements of the same specialized panel two years in a row. Rostered counsel who are on a single specialized panel must meet the requirements of that panel each year.

8. Repealed.

9. ~~Law Court Appeals~~**Appellate Panel.** In order to be rostered for appellate assignments for adult criminal, child protection, or juvenile clients to Law Court appeals in cases where trial counsel is not continuing on appeal, an attorney must:

~~A. Have provided representation to the conclusion of six cases. “Conclusion” means:~~

- ~~1) In criminal and juvenile cases, the entry of sentence or disposition either after plea or trial or the entry into a deferred disposition; —~~
- ~~2) In child protective cases, the issuance of a jeopardy order or an order terminating~~

~~parental rights; Repealed.~~

~~B. Applicants who have provided representation in three or more appeals, including appeals to the Law Court and Rule 80B or Rule 80C appeals to the Superior Court, must submit copies of briefs that they have filed in the three appeals most closely pre-dating the date of their application for placement on the appellate roster. Repealed.~~

~~C. Applicants who have not provided representation in three or more appeals must submit copies of any briefs that they have filed in an appeal, together with copies of a sufficient number of memoranda of law submitted to any court so that the submissions total three. Repealed.~~

~~D. Submit a letter explaining the applicant's interest in and qualifications for providing representation on appeals; including a description of the applicant's experience with appeals, representative examples of issues raised on appeal, and a summary of the results of those appeals; and Repealed.~~

~~E. If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice asserting that the applicant is qualified to provide representation in appeal cases. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author. Repealed.~~

~~F. Letters of reference shall be submitted upon the request of the Executive Director, or his or her designee. Repealed.~~

~~G. This rule is not applicable to cases where trial counsel continues on appeal. Repealed.~~

~~H. Have at least 3 years of experience as a Rostered Counsel or 1 year of law court clerkship experience;~~

~~I. Attend and complete the Commission minimum standards training for the appellate panel.~~

~~1. If the Commission has not established a minimum standards training for the appellate panel, the applicant must complete 6 CLE hours dedicated specifically to criminal appeals including but not limited to brief writing, legal writing, legal research, substantive criminal law updates; standards of review; using technology to write briefs; effective oral arguments; tips for everyday appellate practice; effective sentence appeals; and ethics in an appellate practice within the previous 2 years.~~

~~2. These CLE requirements are only applicable if Commission-approved courses are provided in Maine that meet these requirements or if the Commission authorizes and pays for attendance, travel, 3 meals, accommodations, and 8~~

hours of daily pay at the hourly rate to attend an out of state CLE that meets all these requirements when such CLEs are not offered in Maine;

J. Submit a letter explaining the applicant's interest in and qualifications for providing representation on appeal, including a description of the applicant's experience with appeals, representative examples of issues raised on appeal, and a summary of the results of those appeals. This should include the name and docket number of the cases the applicant has written a brief on;

K. Three letters of reference from attorneys with whom the applicant does not practice shall also be submitted upon the request of the Executive Director or their designee if seeking a waiver;

L. Must recertify every year that all requirements are met to remain on the appellate panel. Rostered Counsel who are on multiple specialized panel rosters must, in order to maintain eligibility for all panels, complete the CLE requirements for at least one of those panels each year. Rostered Counsel may not satisfy this requirement, however, by meeting the requirements of the same specialized panel two years in a row. Rostered counsel who are on a single specialized panel must meet the requirements of that panel each year; and

M. This panel is applicable to all appeals except those appeals regarding the setting of bail.

10. **Post-Conviction Review.** In order to be rostered for post-conviction review assignments for adult or juvenile clients ~~eases~~ an attorney must:

~~A. Have at least three years of criminal law experience; Repealed.~~

~~B. Have previously qualified to be placed on the trial roster for the case type applicable to the conviction being challenged on post conviction review; Repealed.~~

~~C. Submit a letter explaining the applicant's interest in and qualifications for providing representation in post conviction review cases, including a description of the applicant's criminal law experience generally and how that experience prepared the applicant to address the issues applicable to post conviction review cases; and Repealed.~~

~~D. If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice asserting that the applicant is qualified to provide representation in post conviction cases. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author. Repealed.~~

~~E. Letters of reference and writing samples shall also be submitted upon the request of the Executive Director, or his or her designee. Repealed.~~

~~F. Be Rostered Counsel on the Specialized Case Type Roster for the type of the case~~

being challenged on post-conviction review;

- G. Attend and complete the Commission minimum standards training for the post-conviction review panel.
 - 1. If the Commission has not established a minimum standards training for the post-conviction review panel, the applicant must complete 6 CLE hours dedicated specifically to post-conviction review or ineffective assistance of counsel claims within the previous two years.
 - 2. These CLE requirements are only applicable if Commission-approved courses are provided in Maine that meet these requirements or if the Commission authorizes and pays for attendance, travel, 3 meals, accommodations, and 8 hours of daily pay at the hourly rate to attend an out of state CLE that meets all these requirements when such CLEs are not offered in Maine;
 - H. Submit a letter explaining the applicant's interest in and qualifications for providing representation in post-conviction review cases, including a description of the applicant's criminal law experience generally and how that experience prepared the applicant to address the issues applicable to post-conviction review cases;
 - I. Three letters of reference from attorneys with whom the applicant does not practice and writing samples shall also be submitted upon the request of the Executive Director or their designee; and
 - J. Must recertify every year that all requirements are met to remain on the post-conviction review panel. Rostered Counsel who are on multiple specialized panel rosters must, in order to maintain eligibility for all panels, complete the CLE requirements for at least one of those panels each year. Rostered Counsel may not satisfy this requirement, however, by meeting the requirements of the same specialized panel two years in a row. Rostered counsel who are on a single specialized panel must meet the requirements of that panel each year.
11. **Felonies.** In order to be rostered for felony cases an attorney must:
- A. Have completed the mentor-mentee 10 case assignment requirement;
 - B. Work with 2 different mentors on your first 2 felony case assignments (1 mentor per assignment). The mentee shall be liberally assigned a mentor for future felony assignments after the first 2 assignments if such a requested is submitted in writing to the Executive Director or their designee.
 - C. Attend and complete the Commission minimum standards training for felonies panel.
 - 1. If the Commission has not established a minimum standards training, the attorney must complete 6 CLE hours dedicated to felony defense representation, felony sentencing in Maine, sentencing alternatives, probation in Maine, collateral consequences of felony convictions or similar topics within the previous 2 years.
 - 2. These CLE requirements are only applicable if Commission-approved courses

are provided in Maine that meet these requirements or if the Commission authorizes and pays for attendance, travel, 3 meals, accommodations, and 8 hours of daily pay at the hourly rate to attend an out of state CLE that meets all these requirements when such CLEs are not offered in Maine; and

D. Must recertify every year that all requirements are met to remain on the felony panel. Rostered Counsel who are on multiple specialized panel rosters must, in order to maintain eligibility for all panels, complete the CLE requirements for at least one of those panels each year. Rostered Counsel may not satisfy this requirement, however, by meeting the requirements of the same specialized panel two years in a row. Rostered counsel who are on a single specialized panel must meet the requirements of that panel each year.

12. Lawyer of the Day. In order to be rostered for Lawyer of the Day (LOD) assignments an attorney must:

A. For Juvenile client Lawyer of the Day assignments:

1. Attend and complete the Commission minimum standards training for juvenile LOD.
 - a. If the Commission has not established a minimum standards training for juvenile LODs, the attorney must complete 6 CLE hours on two or more of the following topics within the previous 2 years: juvenile defense, placement options and dispositions for juveniles, child development, adolescent brain development, adolescent mental health diagnosis and treatment, and the collateral consequences of juvenile adjudications plus 1 CLE hour on ethics related to the defense of juveniles.
 - b. These CLE requirements are only applicable if Commission-approved courses are provided in Maine that meet these requirements or if the Commission authorizes and pays for attendance, travel, 3 meals, accommodations, and 8 hours of daily pay at the hourly rate to attend an out of state CLE that meets all these requirements when such CLEs are not offered in Maine.
2. To serve as LOD for a juvenile the attorney serving as the LOD must be Rostered Counsel on the Specialized Case Type Roster for the type of the case of which the juvenile is charged with unless such attorney is not available;
3. Must have shadowed with a Commission staff attorney or rostered LOD mentor counsel for a minimum of 3 occasions at LOD proceedings.
 - a. Shadowing means the shadowing attorney must be present at all time with the Commission staff attorney or rostered LOD counsel from the time they arrive at court until the LOD proceeding is concluded. This also includes reviewing the discovery.
 - b. Attorneys doing the shadowing shall be paid for their time.
4. Must perform 5 LOD assignments with a Commission staff attorney or rostered

LOD mentor counsel.

5. The Commission staff attorney or mentor rostered staff attorney must recommend to the Executive Director or their designee in writing that the LOD applicant attorney should be rostered on the juvenile LOD panel.
 - a. If the Commission staff attorney or mentor rostered staff attorney cannot recommend the LOD applicant attorney to be placed on the juvenile LOD roster the Commission staff attorney or mentor rostered staff attorney must explain in writing what areas the attorney needs to improve. The Executive Director or their designee and the mentor will work with the attorney to develop the skills necessary to be placed on the roster including continued work.
 - b. Once the necessary additional training is completed the attorney must perform 1 juvenile LOD assignment with a Commission staff attorney or mentor rostered staff attorney and be recommended for placement on the juvenile LOD roster by the Commission staff attorney or mentor rostered staff attorney before they can be a rostered LOD attorney. This process shall repeat until the Commission staff attorney or mentor rostered staff attorney can recommend the LOD applicant attorney be rostered. The mentor rostered attorney shall be paid for all their time in performing under this subsection;
 - c. If the Commission staff attorney or mentor rostered staff attorney refuse to recommend placement on the juvenile LOD roster, that action may be appealed pursuant to 4 M.R.S. § 1804(3)(J) and Commission Rule 94-649 Chapter 201; and
6. Must recertify every year that all requirements are met to remain on the juvenile LOD panel. Rostered Counsel who are on multiple specialized panel rosters must, in order to maintain eligibility for all panels, complete the CLE requirements for at least one of those panels each year. Rostered Counsel may not satisfy this requirement, however, by meeting the requirements of the same specialized panel two years in a row. Rostered counsel who are on a single specialized panel must meet the requirements of that panel each year.

B. For Adult client Lawyer of the Day assignments:

1. Attend and complete the minimum training standards for LOD.
 - a. If the Commission has not established a minimum standards training standard for adult LOD, the attorney must complete 6 CLE hours dedicated to felony defense representation, felony sentencing in Maine, sentencing alternatives, probation in Maine, collateral consequences of felony convictions or similar topics within the previous 2 years.
 - b. These CLE requirements are only applicable if Commission-approved courses are provided in Maine that meet these requirements or if MCILS authorizes and pays for attendance,

- travel, 3 meals, accommodations, and 8 hours of daily pay at the hourly rate to attend an out of state CLE that meets all these requirements when such CLEs are not offered in Maine;
2. Must have shadowed with a Commission staff attorney or rostered LOD mentor counsel for a minimum of 2 occasions.
 - a. Shadowing means the shadowing attorney must be present at all time with the MCILS staff attorney or rostered LOD counsel from the time they arrive at court until the LOD proceeding is concluded. This also includes reviewing the discovery.
 - b. Attorneys doing the shadowing shall be paid for their time;
 3. Must perform 3 LOD assignments with a Commission staff attorney or the same mentor rostered LOD counsel for a minimum of 3 times.
 - a. The Commission staff attorney or mentor rostered staff attorney must recommend to the Executive Director or their designee in writing that the LOD applicant attorney should be rostered on the adult LOD panel.
 - b. If the Commission staff attorney or mentor rostered staff attorney cannot recommend the LOD applicant attorney to be placed on the LOD roster the Commission staff attorney or mentor rostered staff attorney must explain in writing what areas the attorney needs to improve. The Executive Director or their designee and the mentor will work with the attorney to develop the skills necessary to be placed on the roster.
 - c. Once the necessary additional training is completed the attorney must perform 1 adult LOD assignment with a Commission staff attorney or mentor rostered staff attorney and be recommended for placement on the juvenile LOD roster by the Commission staff attorney or mentor rostered staff attorney before they can be a rostered adult LOD attorney. This process shall repeat until the Commission staff attorney or mentor rostered staff attorney can recommend the adult LOD applicant attorney be rostered. The mentor rostered attorney shall be paid for all their time in performing under this subsection;
 - d. If the Commission staff attorney or mentor rostered staff attorney refuse to recommend placement on the juvenile LOD roster, that action may be appealed pursuant to 4 M.R.S. § 1804(3)(J) and Commission Rule 94-649 Chapter 201;
 4. Have concluded a minimum of 50 Commission assigned cases. Rostered Ceounsel are not eligible to shadow a Commission staff attorney or a

Rostered Counsel on the Lawyer of the Day Roster until they have concluded at least 50 Commission assigned cases.;

5. Must be on the felony panel; and
6. Must recertify every year that all requirements are met to remain on the adult LOD panel. Rostered Counsel who are on multiple specialized panel rosters must, in order to maintain eligibility for all panels, complete the CLE requirements for at least one of those panels each year. Rostered Counsel may not satisfy this requirement, however, by meeting the requirements of the same specialized panel two years in a row. Rostered counsel who are on a single specialized panel must meet the requirements of that panel each year.

13. Mentor Panel. In order to be rostered as a mentor an attorney must:

1. Be Rostered Counsel on the Specialized Case Type Roster for the type of the case of which the attorney is willing to accept mentor assignments;
2. Complete the application created by the Commission to be a mentor; and
3. Have at least 5 years of experience as a Rostered Counsel.

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. Repealed.~~
- ~~2. An attorney may apply for a conditional waiver if additional time is needed to meet CLE requirements. Repealed.~~
- ~~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. Repealed.~~
1. Rostered Counsel seeking to be on a Specialized Case Type Panel can seek a waiver of the requirements. The attorney must:

- (1) Send a letter to the Executive Director or their designee identifying:
 - (a) The Specialized Case Type Panel for which a waiver is sought;
 - (b) The requirements to be waived; and
 - (c) Why the waiver is appropriate.
- (2) Waivers shall be presumptively denied except when exceptional evidence demonstrates a waiver is appropriate:
 - (a) ~~w~~When the requirement being waived is the rostered experience provision from a different jurisdiction or private practice the waiver shall not be presumptively denied;:-
 - (b) If the applicant attorney has equivalent criminal law experience in a different jurisdiction a waiver should be granted if all other requirements are met; and
 - (c) If there is a need for more Rostered Counsel in the geographical location the applicant attorney plans to practice.

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

EFFECTIVE DATE:

July 8, 2011

AMENDED:

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