

**MCILS**

**November 17, 2020  
Commissioner's Meeting  
Packet**

---

---

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

---

---

**NOVEMBER 17, 2020**  
**ZOOM COMMISSION MEETING**  
**AGENDA**

---

- 1) Rulemaking Discussion
- 2) Supplemental Budget Request
- 3) Prosecutor Interactions with Pro Se Defendants
- 4) Executive Director Search Subcommittee
- 5) Public Comment
- 6) Set Date, Time and Location of Next Regular Meeting of the Commission
- 7) Executive Session, if needed (Closed to Public)

**(1.)**

# **Rulemaking Discussion**

---

---

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

---

---

**TO:** MCILS COMMISSIONERS  
**FROM:** JOHN D. PELLETIER, EXECUTIVE DIRECTOR  
**CC:** ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR  
**SUBJECT:** MCILS RULEMAKING PROCESS  
**DATE:** November 13, 2020

---

Attached are drafts of Chapter 2 and Chapter 3, the Commission's major substantive rules with track changes reflecting changes based on the discussion of the drafts at the November 4, 2020 meeting.

**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 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.

**SECTION 1A. Admissions for Previously Admitted Rostered Attorneys at the Time These Amended Rules and Standards are Implemented.**

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

1. Currently rostered counsel shall maintain their current status on rosters for the first year after the enactment of these rules and standards provided that they meet the new minimum experience requirements. 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.
2. Any attorney not previously rostered to receive assignments from MCILS when these standards and rules are enacted must comply with all requirements to be rostered.

**SECTION 1B. General Eligibility Requirements**

1. MCILS has adopted requirements that attorneys must meet in order to become a rostered counsel. Attorneys must demonstrate their qualifications and be rostered by MCILS in order to be assigned cases and compensated. Attorney rostering is subject to ongoing legal education requirements and periodic recertification.

2. The Executive Director or their designee shall develop an application process for an attorney seeking assignments to demonstrate the minimum qualifications necessary to be placed on a roster, including specialized rosters. An applicant must present additional information beyond the minimum requirements of this Chapter if requested by the Executive Director or their designee.
3. 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.
4. 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. 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.
5. All attorneys must comply with all standards, procedures, and rules of MCILS.
6. 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.
7. 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 MCILS annually in a manner prescribed by MCILS. Rostered counsel must also comply with any MCILS 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 filing. 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.
2. Rostered counsel shall not knowingly make a false statement of material fact or law to the court, MCILS, or a third person.
3. 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.
4. Rostered counsel shall not accept any compensation or other consideration for assigned cases except through MCILS.
  5. Rostered counsel must enter new assignments into MCILS billing system within 5 days of the appointments.

**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. ~~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.~~
  - c.) ~~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

Rostered counsel ~~The attorney~~ must register with the Commission annually in a manner prescribed by the Commission. ~~The attorney~~ Rostered counsel must comply with all applicable Commission rules and procedures. 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 attorney'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. Rostered counsel must complete the minimum training requirements prior to being rostered and assigned cases.
5. Attorneys applying to be rostered and rostered attorneys must disclose any criminal convictions. The Executive Director or their designee shall use their discretion to determine if the conviction disqualifies the applicant attorney.

### **SECTION 3. Office, Telephone, and Electronic Mail**

~~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.

~~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. The attorney 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.

~~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 MCILS, the Courts, and clients.~~

~~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 Attorneys**

~~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. Any attorney not previously rostered must satisfactorily complete a Commission-sponsored or Commission-approved training course.
2. 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.
3. At a minimum, rostered counsel shall annually complete 8 hours of continuing legal education (CLE) approved by MCILS. These hours are not in addition to any other MCILS CLE requirements but are included in any other MCILS CLE requirements. Rostered counsel shall annually complete 8 hours for criminal rosters and 8 hours for child protective rosters if they want to be on each panel, if MCILS offers such CLE training.
4. Rostered counsel shall meet any specific training requirements of any specialized panels.

## **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 case types and court locations for any failure to comply with ~~any MCILS~~~~this or any other Commission~~ rule ~~or standard or in the interest of MCILS~~. 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~~ 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 Attorneys~~ removed indefinitely must re-apply to ~~the Commission~~ MCILS if they wish to receive assignments in the future. A rostered attorney ~~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 provisions in this section are in addition to and compliment any other policy or rule of MCILS.
4. 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

Rostered counsel shall notify the Executive Director or their designee within five business days of learning of any of the following:

- a. Within 5 business days of 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 attorney who has been convicted of a Title 17-A, Chapter 45 (Drugs) and Title 29-A, § 2411 (OUI) or similar crimes in a different jurisdiction while rostered cannot receive any new assignments until the rostered attorney has completed a substance abuse evaluation and is engaged in any recommend counseling and 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;
- f. A court or agency has found the attorney engaged in conduct which is subject to mandatory reporting under the Maine Rules of Professional Conduct;
- g. Any condition or circumstance that exist that renders the rostered attorney unable to comply with applicable MCILS Performance Standards or Policies;  
or
- h. Any conduct that constitutes a violation of any of the rostered counsel's ethical duties.

The obligations set forth above (Notice of Complaints or Potential Conflicts) apply independently of each other and without regard to either the jurisdiction in which the proceedings are instituted or take place, or whether any portion of said proceedings are otherwise considered to be private or confidential.

With regard to a complaint opened or petition for discipline filed by the Maine Board of Overseers of the Bar or the attorney licensing authority of any state or jurisdiction rostered counsel shall, within five business days of learning of such complaint or disciplinary action, provide a copy of the complaint or petition to the Executive Director or their designee. The attorney shall also provide to the Executive Director or their designee a copy of rostered counsel's answer to the complaint or petition within one week after its filing. Finally, within one week after the disposition or resolution of a complaint or disciplinary action before the Maine Board of Overseers of the Bar or the attorney licensing authority of any state or jurisdiction, including a disposition or resolution under which imposed discipline does not take effect immediately, rostered counsel shall provide to the Executive Director or their designee a copy of any order, agreement, or other document which sets forth the disposition or resolution of the matter.

The requirements of this section shall apply regardless of whether the complaint or other disciplinary action, including the final disposition or resolution of the complaint or disciplinary action, is treated as a public or private matter by the Maine Board of Overseers of the Bar or the attorney licensing authority of any state or jurisdiction.

MCILS and its staff shall keep confidential all information involving allegations that rostered counsel has engaged in misconduct or that an attorney's physical or mental condition may adversely affect his or her ability to practice law and shall maintain information reported under this section exclusively for the performance of the MCILS's responsibilities. Such information shall not be disseminated to any person or organization for any purpose without the prior written consent of the rostered counsel or until the matter otherwise becomes public. MCILS and its staff are permitted to disclose information that

is necessary to justify any actions MCILS takes toward rostered counsel.

A rostered attorney who has a negative finding made against them with regards to the obligations set forth above (Notice of Complaints or Potential Conflicts) cannot receive any new assignments and must reapply to become rostered. The Executive Director shall have the discretion to reassign any MCILS case currently assigned to the rostered attorney and mandate the rostered attorney withdraw from those case.

An attorney applying to be rostered who has any matters pending with regard to the obligations set forth above (Notice of Complaints or Potential Conflicts) 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.

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

EFFECTIVE DATE:  
June 25, 2010

AMENDED:

**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 offenses

C. Serious-violent felonies-Major felony

D. Operating under the influence

E. Domestic violence

F. Juvenile defense

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 MCILS and are 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 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.
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 rostered 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 or adjudicatory hearings of which the attorney has been lead counsel on 2 of the jury trials or adjudicatory hearings;
- J. Attend and complete the minimum training standards for Murder and non OUI Manslaughter panel. If MCILS has not established a minimum training standard for Murder and non OUI Manslaughter CLE the attorney must complete 12 CLE hours addressing one the following topics within the last 2 years: defense of homicides, forensic and scientific issues relating to DNA testing, fingerprint analysis, mental health issues, and eyewitness identification. These CLE requirements are only applicable if MCILS certified CLE classes 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;

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 MCILS 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 manslaughter;

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 panel. It is sufficient for recertification purposes that the rostered specialized panel attorney has met any specialized panel CLE requirements to remained certified for the murder and non OUI manslaughter panel except the same CLE panel requirements cannot be repeated in 2 consecutive years.

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

A. Must qualify for the Murder and non OUI Manslaughter for adult and juvenile panel and the OUI panel; and

B. Must recertify every year that all requirements are met to remain on the panel. It is sufficient for recertification purposes that the rostered specialized panel attorney has meet any specialized panel CLE requirements to remained certified for the OUI manslaughter panel except the same CLE panel requirements cannot be repeated in 2 consecutive years.

2. **Sex Offenses.** In order to be rostered for sex 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 ~~rostered~~ criminal defender~~rostered~~ attorney;~~
- ~~G. Have been co-counsel on at least 3 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 or adjudicatory hearing;~~
- ~~J. Attend and complete the minimum training standards for Sex Offenses panel. If MCILS has not established a minimum training standard the attorney must complete 6 CLE hours addressing at least 1 of the following topics within the last 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. These CLE requirements are only applicable if MCILS certified CLE classes 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;~~
- ~~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 panel. It is sufficient for recertification purposes that the rostered specialized panel attorney has met any specialized panel CLE requirements to remained certified for the sex offense panel except the same CLE panel requirements cannot be repeated in 2 consecutive years.~~

3. ~~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 rostered criminal defenderostered 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 or adjudicatory hearing;~~
- ~~I. Have completed to dismissal or sentencing a minimum of 25 felony cases.~~
- ~~J. Attend and complete the minimum training standards for major felony panel. If MCILS has not established a minimum training standard the attorney must complete 6 CLE hours addressing at least 1 of the following topics within the last 2 years: cross-examination of prosecution witnesses, chain of custody evidentiary issues, admission of medical records, and eyewitness. These CLE requirements are only applicable if MCILS certified CLE classes 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;~~
- ~~K. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with a major felony. Your 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 panel. It is sufficient for recertification purposes that the rostered specialized panel attorney has met any specialized panel CLE requirements to remained certified for the major~~

felony panel except the same CLE panel requirements cannot be repeated in 2 consecutive years.

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 rostered criminal defense rostered attorney;
- H. Have been an attorney of record in at least 1 jury trial or adjudicatory hearing;
- I. Attend and complete the minimum training standards for OUI panel. If MCILS has not established a minimum training standard the attorney must complete 6 CLE hours dedicated specifically to the defense of OUIs during the last 2 years. These CLE requirements are only applicable if MCILS certified CLE classes 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;
- J. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged OUIs. Your 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 panel. It is

sufficient for recertification purposes that the rostered specialized panel attorney has met any specialized panel CLE requirements to remain certified for the OUI panel except the same CLE panel requirements cannot be repeated in 2 consecutive years.

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 rostered criminal defenderostered attorney;
- H. Have been the attorney of record for at least 1 jury trial;
- I. Attend and complete the minimum training standards for domestic violence panel. If MCILS has not established a minimum training standard the attorney must complete 6 CLE hours dedicated specifically to the defense of domestic violence cases in the last 2 years. These CLE requirements are only applicable if MCILS certified CLE classes 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;
- 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 panel. It is sufficient for recertification purposes that the rostered specialized panel attorney has met any specialized panel CLE requirements to remained certified for the domestic violence panel except the same CLE panel requirements cannot be repeated in 2 consecutive years.

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;

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

1. Attend and complete the minimum training standards for juvenile defense panel. If MCILS has not established a minimum training standard the attorney must complete 6 CLE hours on two or more of the following topics within the last 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. These CLE

requirements are only applicable if MCILS certified CLE classes 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. 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 panel. It is sufficient for recertification purposes that the rostered specialized panel attorney has met any specialized panel CLE requirements to remained certified for the juvenile panel except the same CLE panel requirements cannot be repeated in 2 consecutive years.

#### 6A. Bind-over hearings

1. A rostered attorney 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. To continue representing the juvenile the rostered attorney must meet the following requirements. If the rostered attorney does not meet the requirements, then the MICLS executive director or their designee shall appoint assign a second rostered attorney who does meet the requirements. Consistent with section 8(k) two attorneys shall be appoint assigned to every bind over hearing. One attorney must be a bind over rostered attorney and one attorney must be on the adult murder, adult sex offense or adult violent 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 the rostered attorney 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 minimum training standards for the bind-over hearings panel. If MCILS has not established a minimum training standard the attorney must have attended in the last 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. These CLE requirements are only applicable if MCILS offers CLE classes 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.

e. Must recertify every year that all requirements are met to remain on the panel. It is sufficient for recertification purposes that the rostered specialized panel attorney has met any specialized panel CLE requirements to remained certified for the bind-over hearing panel except the same CLE panel requirements cannot be repeated in 2 consecutive years. However, the bind-over hearing panel CLE requirements must be repeated at least once every 10 years.

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 five years;

C. Have attended in the last three years at least four hours of CLE credit on topics related to the representation of parents in protective custody proceedings;

D. Provide a letter explaining reasons for interest in and qualifications for representing parents in protective custody proceedings; and

E. 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 MCILS 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. Rostered counsel should have the level of expertise and experience required to handle the case. Rostered counsel shall attend two Preliminary Protection Order waivers, one contested Preliminary Protection Order Hearing, two Jeopardy agreement on the record, one contested Jeopardy Hearing, one Termination of

Parental Rights consent on the record, and one contested Termination of Parental Rights Hearing, prior to representing clients. Upon accepting MCILS assignments, rostered counsel shall have co-counsel at for 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.

H. The attorney 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.

**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 rostered attorney experience or 1 year of law court clerkship experience;
- I. Attend and complete the minimum training standards for the appellate panel. If MCILS has not established a minimum training standard 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 last 2 years. These CLE requirements are only applicable if MCILS certified CLE classes 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;
- 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 panel. It is sufficient for recertification purposes that the rostered specialized panel attorney has met any specialized panel CLE requirements to remained certified for the appellate panel except the same CLE panel requirements cannot be repeated in 2 consecutive years; 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 on the roster for the case type applicable to the conviction being challenged on post-conviction review;~~
  - ~~G. Attend and complete the minimum training standards for the appellate panel. If MCILS has not established a minimum training standard for the appellate panel the applicant must complete 6 CLE hours dedicated specifically to post-conviction review or ineffective assistance of counsel claims. These CLE requirements are only applicable if MCILS certified CLE classes 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;~~
  - ~~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 panel. It is sufficient for recertification purposes that the rostered specialized panel attorney has met any specialized panel CLE requirements to remained certified for the PCR panel except the same CLE panel requirements cannot be repeated in 2 consecutive years.~~

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 appointed assigned a mentor for future felony appointment assignments after the first 2 appointment assignments if such a requested is submitted in writing to the Executive Director or their designee. The Executive Director or their designee shall work with the mentee after the fifth request to determine why a mentor is requiring a mentor on future felony assignment appointees and require the mentee to engage in the necessary training to assist the mentee to become felony qualified.
- C. Attend and complete the minimum training standards for felonies panel. If MCILS has not established a minimum training standard 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 last 2 years. These CLE requirements are only applicable if MCILS certified CLE classes 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; and
- D. Must recertify every year that all requirements are met to remain on the panel. It is sufficient for recertification purposes that the rostered specialized panel attorney has met any specialized panel CLE requirements to remained certified for the felony panel except the same CLE panel requirements cannot be repeated in 2 consecutive years.

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

- A. For Juvenile client Lawyer of the Day assignments:
  - 1. Attend and complete the minimum training standards for juvenile LOD. If MCILS has not established a minimum training standard for juvenile LODs, the attorney must complete 6 CLE hours on two or more of the following topics within the last 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. These CLE requirements are only applicable if MCILS certified CLE classes 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. To serve as LOD for a juvenile the attorney serving as the LOD must be on the

specialized panel for what the juvenile is charged with unless such attorney is not available;

3. Must have shadowed with a MCILS staff attorney or rostered LOD mentor counsel for a minimum of 3 occasions at LOD proceeding. 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. Attorneys doing the shadowing shall be paid for their time;
4. Must perform 5 LOD assignments with a MCILS staff attorney or rostered LOD mentor counsel shadowing for a minimum of 5 times. The MCILS 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. If the MCILS staff attorney or mentor rostered staff attorney cannot recommend the LOD applicant attorney to be placed on the juvenile LOD roster the MCILS staff attorney or mentor rostered staff attorney must explain in writing what areas the attorney needs to improve. The executive director or their designee will with the mentor will work with the attorney to develop the skills necessary to be placed on the roster including continued work. Once the necessary additional training is completed the attorney must perform 1 juvenile LOD assignment with a MCILS staff attorney or mentor rostered staff attorney and be recommended for placement on the juvenile LOD roster by the MCILS staff attorney or mentor rostered staff attorney before they can be a rostered LOD attorney. This process shall repeat until the MCILS 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; and
5. Must recertify every year that all requirements are met to remain on the panel. It is sufficient for recertification purposes that the rostered specialized panel attorney has met any specialized panel CLE requirements to remained certified for the juvenile LOD panel except the same CLE panel requirements cannot be repeated in 2 consecutive years.

B. For Adult client Lawyer of the Day assignments:

1. Attend and complete the minimum training standards for LOD. If MCILS has not established a minimum 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 lasts 2 years. These CLE requirements are only applicable if MCILS certified CLE classes 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 MCILS staff attorney or rostered LOD mentor counsel for a minimum of 2 occasions. 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. Attorneys doing the shadowing shall be paid for their time;
3. Must perform 3 LOD assignments with a MCILS staff attorney or the same mentor rostered LOD counsel for a minimum of 3 times. The MCILS 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. If the MCILS staff attorney or mentor rostered staff attorney cannot recommend the LOD applicant attorney to be placed on the LOD roster the MCILS staff attorney or mentor rostered staff attorney must explain in writing what areas the attorney needs to improve. The executive director or their designee with a mentor will work with the attorney to develop the skills necessary to be placed on the roster. Once the necessary additional training is completed the attorney must perform 1 adult LOD assignment with a MCILS staff attorney or mentor rostered staff attorney and be recommended for placement on the juvenile LOD roster by the MCILS staff attorney or mentor rostered staff attorney before they can be a rostered adult LOD attorney. This process shall repeat until the MCILS 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;
4. Have concluded a minimum of 50 MCILS assigned cases. Rostered counsel cannot do the shadowing requirement until this provision is met;
5. Must be on the felony panel; and
6. Must recertify every year that all requirements are met to remain on the panel. It is sufficient for recertification purposes that the rostered specialized panel attorney has met any specialized panel CLE requirements to remained certified for the adult LOD panel except the same CLE panel requirements cannot be repeated in 2 consecutive years.

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

1. Be on the specialized panel for the panels they are willing to accept assignments as a mentor;
2. Complete the application created by the MCILS to be a mentor; and
3. Have at least 5 years of experience as a rostered counsel.

a. Purpose and Goals

1. To ensure quality representation, on-going training, assist less experienced rostered attorneys and to ensure the quality of LOD counsel MCILS is recommending the creation of a Mentor Panel.
2. Practically, the mentor/mentee relationship should bridge the gap between law school and the practice of law by providing guidance in the new lawyer's professional conduct and promoting a sense of pride in being a practicing lawyer.
3. Mentoring is a process that connects an experienced rostered attorney with a new rostered attorney or less experienced attorney (mentee) to help foster the mentee's professional growth and development.
4. A mentor facilitates the mentee's professional growth by sharing the knowledge and insights that they learned through the years. Through the mentoring process, the mentor and mentee work together to reach specific goals and to provide each other with sufficient feedback to ensure that these goals are reached.

b. Goals of the mentor program are (These will not be left in Chapter 3 but put in practice standards):

1. Program Socialization and Orientation builds a sense of connection to the values and mission of the MCILS. Mentors convey the purpose and importance of MCILS work through their words and personal example. They also share their knowledge and experience about local courts, judges, and practices. They introduce mentees to judges, court personnel, other lawyers and social service providers with whom they will interact on behalf of their clients. Finally, mentors provide valuable information about administrative and logistical issues related to MCILS, including such things as record keeping and billing practices.
2. Knowledge and Skill Building increases new attorneys' competence to represent MCILS clients. Mentors help new MCILS attorneys or less experienced rostered attorneys learn substantive law, court rules and procedures and improve their legal skills through experience, instruction and feedback.
3. Confidence Building supports new attorneys' self-esteem and self-confidence as criminal defense attorneys.
4. Professional Development helps new attorneys identify and select legal practice goals related both to MCILS practice and their overall development as lawyers.
5. The first years of a lawyer's practice are a critical time in the development of professional habits, practices and character. This time can also be a challenging and sometimes stressful periods as lawyers adjust to the pressures of practice management, client relations and the adversarial process. To facilitate this transition into the practice of law,



the MCILS has created the Mentor-Mentee panel. The goal of the Mentor-Mentee panel is to introduce new lawyers to the high standards of integrity, professional conduct, professional competence and service to the public that are expected of MCILS rostered attorneys.

c. General Standards (These will not be left in Chapter 3 but put in practice standards):

1. The Executive Director or their designee shall develop an application process for an attorney seeking assignment to the mentor panel to demonstrate the minimum qualifications necessary. An applicant must present additional information beyond the minimum requirements of this Chapter if requested by Executive Director or their designee.
2. The Executive Director or their designee shall develop a written performance evaluation to be completed by the mentor to evaluate the performance of the mentee on an ongoing basis and at the conclusion of the initial mentor/mentee supervision period.
3. The Executive Director or their designee shall develop a written performance evaluation to be completed by the mentee to evaluate the performance of the mentor at the conclusion of the initial mentor/mentee supervision period.
4. The Executive Director or their designee, shall have the sole discretion to make the determination if an attorney is qualified to be placed on the mentor panel. In addition, the Executive Director or their designee, shall have the sole discretion, to grant or deny a waiver.
5. The Executive Director or their designee, may, in their sole discretion, remove an attorney from the mentor panel at any time if the attorney is not meeting the minimum qualifications and standards as determined by the Executive Director or their designee.
6. This subsection does not exempt an attorney from satisfying the requirements of MCILS at any time thereafter or limit the authority of the Executive Director or their designee, to remove or add an attorney from the mentor panel at any time.
7. The relationship between mentor and mentee attorneys shall be that of co-counsel. The attorney-client relationship shall apply to both attorneys and any potential conflicts or actual conflicts are applicable to both attorneys.
8. The Executive Director or their designee shall provide oversight of the mentoring program.
9. The Executive Director or their designee shall inquire of the newly rostered attorney if there is a rostered mentor they would prefer to work with. If the newly rostered attorney does not have a preference the Executive Director or their designee shall assign a rostered mentor.
10. If the mentor and mentee are unable to continue working together after

their assignment the Executive Director or their designee shall assign a new rostered mentor. The mentor and mentee must explain in writing why they are no longer able to continue working together.

11. The Executive Director or their designee may for good cause shown provide a newly rostered attorney with a waiver of the mentor/mentee requirements.

d. Process (These will not be left in Chapter 3 but put in practice standards):

1. The mentor and mentee shall work on a total of 10 assigned cases from assignment to final disposition.

2. The specific activities of a mentor will vary with the needs of the mentee while, at the same time, be guided by the written performance evaluation developed by the Executive Director or their designee in writing. At a minimum, the mentor should initiate and conduct an initial face-to-face meeting with the assigned mentee at the earliest possible date.

3. For the first 3 case assignments the mentee must meet with mentor attorneys on a weekly basis to review all work completed, the future plan of the case and work to be performed and to review all billing entries. Thereafter, they must meet at least monthly to review cases and professional development goals. Depending on need, some mentor pairs will meet more often in the beginning until the mentor is comfortable with the mentee's skill level and knowledge of the substantive area. Likewise, as mentees gain experience and confidence, mentoring pairs may decide that they can meet less than monthly.

4. Mentors and Mentees must attend all court hearings and client meetings together with direct supervision being provided by the mentor on the first 3 case assignments. Thereafter, the mentor should attend all court proceedings. However, the decision to attend client meetings or other meetings shall be left to the discretion of the mentor after the first 3 case assignments. If the mentor does not attend client meetings or other meetings the mentee must brief the mentor as to what occurred at the meeting.

5. Mentor and mentees must have full access to the client's file.

6. Mentors and mentees should meet in an office setting or other space, including virtually, that permits the private discussion of confidential and other sensitive matters. This should be the same space where rostered attorney meet with their clients.

7. Mentors shall provide ongoing feedback to the mentee and the Executive Director or their designee in written format.

8. At the conclusion of the tenth case worked on between the mentor and mentee or if the relationship ends earlier the mentor must certify in writing to the Executive Director or their designee the mentee has demonstrated the skill necessary to work independently of a mentor and

complete the written performance evaluation developed by the Executive Director or their designee. If the mentor is unable to make such certification, they must identify the issues preventing certification and work with the mentor and the Executive Director or their designee to develop a plan to assist the mentee to become certified.

9. The mentee must advise the client in writing of the mentor's name and that the mentor's role in representation is not to represent the client but to supervise the mentee's representation of the client.

e. Compensation (These will not be left in Chapter 3 but put in practice standards):

1. Mentors are to be paid at the standard hourly rate for the case level they are mentoring on.

2. Mentee are to be paid at the standard hourly for the case they are assigned.

f. Waiver by Mentees of these requirements. Newly rostered attorneys can seek a waiver of the mentor-mentee requirements. They newly rostered attorneys must:

1. Send a letter to the Executive Director explaining why a waiver is appropriate; and

2. Must have at least 3 years of criminal defense experience.

#### **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.~~

2. Rostered attorneys seeking to be on a specialized panel can seek a waiver of the

requirements they are not meeting. The attorney must:

(1) Send a letter to the Executive Director identifying:

(a) The panel that a waiver is being sought;

(b) The requirements that are being sought 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) except when the requirement being waived is the rostered experience provisions from a different jurisdiction or private practice the waiver shall not be presumptively denied. 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 there is a need for more rostered attorneys in the geographical location the applicant attorney plans to practice.

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

EFFECTIVE DATE:

July 8, 2011

AMENDED:

June 10, 2016 – filing 2016-091

**(2.)**

**Supplemental Budget  
Request**

---

---

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

---

---

**TO:** MCILS COMMISSIONERS  
**FROM:** JOHN D. PELLETIER, EXECUTIVE DIRECTOR  
**CC:** ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR  
**SUBJECT:** SUPPLEMENTAL BUDGET  
**DATE:** November 13, 2020

---

The Budget Office has sent agencies a request for supplemental budget proposals for the current fiscal year. With respect to our budget, you will recall that we finished last year with an approximately \$2.6 unspent balance.

This amount remains as an unencumbered balance in the account used to fund the Commission's operations during the last fiscal year. Because that account is no longer connected to any ongoing program, the funds in that account cannot be transferred by Financial Order as I had earlier suggested. Instead, the transfer must be authorized in a budget bill.

Accordingly, I propose that the Commission submit a supplemental budget initiative transferring the funds into the Commission's current year budget. Doing so should provide sufficient funds for the Commission to meet its obligations for the balance of the fiscal year.

Supplemental budget proposals were originally due to be submitted on November 16<sup>th</sup>. I have obtained permission from the Budget Office to submit the Commission's proposal after the upcoming meeting.

**(3.)**

**Prosecutor Interactions  
with Pro Se Defendants**

---

---

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

---

---

**TO:** MCILS COMMISSIONERS  
**FROM:** JOHN D. PELLETIER, EXECUTIVE DIRECTOR  
**CC:** ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR  
**SUBJECT:** PROSECUTOR INTERACTION WITH PRO SE DEFENDANTS  
**DATE:** November 13, 2020

---

At its August meeting, the Commission discussed the issue of prosecutor interactions with pro se defendants. At that time, the Commission reviewed a draft letter asking the Advisory Committee on the Rules of Professional Conduct to recommend adoption in Maine of two provisions of the ABA Model Rules of Professional Conduct that address this topic.

At that time, one or more Commissioners suggested that the draft was in need of amendment. Since then, however, the Commission has not reached final resolution on the issue. Commissioner Carey has asked that the matter be placed before the Commission at its next meeting. Attached is the draft that was reviewed during the August meeting.



## Advisory Committee on the Rules of Professional Conduct

The Maine Commission on Indigent Legal Services writes to strongly urge the Advisory Committee to recommend amending the Maine Rules of Profession Conduct to include ABA Model Rule 3.8 (b) & (c) regarding the special responsibilities of a prosecutor.

When current Rule 3.8 of the Rules of Professional Conduct was adopted, the Task Force specifically declined to recommend adoption of subsections (b) & (c) of Model Rule 3.8, concluding that subsections (b) & (c), among others, “were unnecessary, and in some cases not appropriate to Maine.” Maine Rule of Professional Conduct 3.8, reporter’s note (2019). Since that time, the Legislature commissioned a study of the delivery of indigent legal services in Maine by the Sixth Amendment Center. Among other things, the Center’s Report criticized Maine’s system based on the extent of contact between prosecutors and unrepresented defendants, stating:

The United States Supreme Court confirmed in Lafler v. Cooper and in Missouri v. Frye that a defendant has the right to “effective assistance of competent counsel” during plea negotiations. The plea negotiation is a critical stage of the case, meaning the negotiation cannot happen unless counsel is present or the defendant’s right to counsel has been knowingly, voluntarily, and intelligently waived. Despite this, throughout the sample counties, prosecutors talk to uncounseled defendants to negotiate guilty pleas. This was most prevalent in the south where larger court populations, and not enough lawyers of the day, exacerbate the problems.

Sixth Amendment Center, Right to Counsel in Maine p. 44, April 2019; [https://sixthamendment.org/6AC/6AC\\_me\\_report\\_2019.pdf](https://sixthamendment.org/6AC/6AC_me_report_2019.pdf). Based on this finding, the Center recommended that:

The State of Maine should statutorily bar communication between prosecutors and unrepresented defendants, unless and until defendants have been informed of their right to appointed counsel, a judge has conducted the legally required colloquy, and a defendant has executed a written waiver of the right to counsel in each case to ensure that all waivers of the right to counsel are made knowingly and voluntarily.

Id. at 88.

In addition, on May 9, 2019, the American Bar Association issued Formal Opinion #486 that imposes significant restrictions on the circumstances under which a prosecutor may engage in plea negotiations with a pro se defendant based on subsections (b) & (c), stating:

The prosecutor must make reasonable efforts to assure that the accused has been advised of the right to counsel and the procedure for obtaining counsel, and has been given a reasonable opportunity to exercise that right and obtain counsel . . . .

Moreover, under Rule 3.8(b) and (c), a prosecutor may not pressure, advise, or induce acceptance of a plea or waiver of the right to counsel after an unrepresented accused has been informed of the right to counsel and is deciding whether to invoke or has initiated the process to invoke that right. Even asking an unrepresented accused if she wishes to waive the right to counsel or accept a plea is improper if it is clear from the circumstances that the accused does not understand the consequences of acceding to the request. This is so because legal advice may be necessary to clarify any such misunderstanding . . . .

ABA Formal Opinion #486, 12-13.

After the Sixth Amendment Center Report was published, many prosecutors altered their practices when dealing with pro se defendants, and the Maine Prosecutors Association sought guidance from Bar Counsel regarding the effect of ABA Formal Opinion #486 on Maine prosecutors dealing with pro se defendants. On May 27, 2020, Assistant Bar Counsel issued an informal opinion noting that Formal Opinion #486 imposed significant restrictions on a prosecutor's ability to plea bargain with a pro se defendant in a case where the right to counsel applied. Bar Counsel noted, however, that in doing so Formal Opinion #486 had focused on the application of Model Rule 3.8 (b) & (c). Noting that those subsections had not been adopted in Maine, Bar Counsel opined that there is no ethical prohibition on Maine prosecutors meeting with pro se defendants or making plea offers prior to the defendant having been advised of the right to counsel by the court and waived that right. Assistant Bar Counsel Informal Opinion Re: MPA Questions – Negotiating with Pro Se Defendants, May 27, 2020.

Based on the Sixth Amendment Center Report and the informal opinion from Assistant Bar Counsel, together with reports about the manner in which at least some prosecutors interact with unrepresented defendants, the Commission is concerned about the State of Maine's ethical rules governing such interactions. The Commission respectfully requests that the Advisory Committee consider whether to add subsections (b) & (c) of Model Rule 3.8 to Maine's Rules of Professional Conduct. As stated above, the Commission strongly urges the Advisory Committee to recommend adoption of these subsections and stands ready to provide additional information to assist the Committee's consideration of this issue.

Thank you for your consideration.

**(4.)**

**Executive Director  
Search Subcommittee**

---

---

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

---

---

**TO:** MCILS COMMISSIONERS  
**FROM:** JOHN D. PELLETIER, EXECUTIVE DIRECTOR  
**CC:** ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR  
**SUBJECT:** EXECUTIVE DIRECTOR SEARCH  
**DATE:** November 13, 2020

---

Chair Tardy has put together a search committee, which held its first meeting on November 13, 2020. At the upcoming meeting, Chair Tardy will update the Commission on the composition of the search committee and the discussion at its initial meeting.