

MCILS

**October 15, 2020
Commissioner's Meeting
Packet**

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

OCTOBER 15, 2020
ZOOM COMMISSION MEETING
AGENDA

- 1) Budget Discussion
- 2) Rulemaking Discussion
- 3) Process for Court Assignment of Attorneys
- 4) OPEGA Report Discussion (Executive Session)
- 5) Attorney Investigation Materials (Executive Session)
- 6) Public Comment
- 7) Set Date, Time and Location of Next Regular Meeting of the Commission

(1.)

Budget Discussions

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
CC: ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR
SUBJECT: BUDGET DISCUSSION
DATE: October 14, 2020

At its last meeting on September 23, 2020, the Commission requested that the staff prepare detailed budget request with four principal items: 1) the expansion of the Commission central office; 2) the creation of a Public Defender Office in Kennebec County; 3) the creation of a Statewide Appellate Defender Office; and 4) an increase in the hourly rate for assigned counsel to \$100 per hour.

Two documents are attached. One is in the format of the State's budget system and shows the requested appropriation for each of the initiatives just described, as well as an initiative to remedy the current shortfall in the Commission's biennial budget. Also attached are spreadsheets outlining the positions and other expenses supporting initiatives 1 through 3.

Chg Pkg Approp/Alloc & Position Count by Reporting Level

Change Group: C Change Type: All Change Number: All Include: Yes One Time: Included

IND00 MAINE COMMISSION ON INDIGENT LEGAL SERVICES

01095FZ11201 MAINE COMMISSION - INDIGENT LEGAL SVCS

Change Package: C-A-1 Priority: Include: Yes

Description: Establishes five Public Service Manager II positions, one Public Service Coordinator I position, one Auditor III position, one Auditor I position and two Field Examiner II positions within the Commission on Indigent Legal Services plus associated All Other costs.

Justification: This initiative implements the recommendation of the Sixth Amendment Center to expand Commission staff that was provided to the Legislature after a study of indigent legal services in Maine performed at the request of the Legislature. The positions established by this initiative will provide for one attorney to oversee attorney evaluation and performance, one attorney to oversee training of attorneys, one non-attorney training staff supervised by the attorney, one attorney to oversee the Commission's internal financial operations and payment of attorney vouchers, one Auditor I position focused on financial operations and voucher payment supervised by the attorney, one Audit Director position and two Field Examiner II positions focused on reviewing the billing practices of attorneys in the field, one trial resource attorney position and one resource attorney for sentencing issues including mental health and substance abuse.

	Part A Initiatives & Other FY 22	Part A Initiatives & Other FY 23
Positions		
LEGISLATIVE COUNT	10.000	10.000
TOTAL	10.000	10.000
Appropriations and Allocations		
PERSONAL SVCS	991,329	1,038,589
ALL OTHER	76,336	53,036
TOTAL	1,067,665	1,091,625

Change Package: C-A-2 Priority: Include: Yes

Description: Establishes positions to create a Public Defender Office in a single county, including two Public Service Manager III positions, four Public Service Manager II positions, five Public Service Coordinator positions, two Clinical Social Worker positions, three Paralegal positions, and one Office Specialist II position, plus associated All Other costs.

Justification: This initiative establishes positions to create a Public Defender Office pilot project in Kennebec County. The positions established by this initiative will provide for a District Defender, a Deputy District Defender, two Homicide and Serious Felony Defenders, two Senior Assistant Public Defenders, three Assistant Public Defenders, three Paralegals, two Investigators, two Social Workers, and one Office Manager. The number of attorney positions is based on national caseload standards. This initiative also provides for associated All Other costs. This initiative is necessary to implement the recommendation of the Sixth Amendment Center to explore a transition to a Public Defender system through a pilot project in a single County. This recommendation was provided to the Legislature after a study of indigent legal services in Maine performed at the request of the Legislature.

	Part A Initiatives & Other FY 22	Part A Initiatives & Other FY 23
Positions		
LEGISLATIVE COUNT	17.000	17.000
TOTAL	17.000	17.000
Appropriations and Allocations		
PERSONAL SVCS	1,813,634	1,902,878
ALL OTHER	143,286	103,676
TOTAL	1,956,920	2,006,554

Chg Pkg Approp/Alloc & Position Count by Reporting Level

Change Group: C Change Type:All Change Number:All Include:Yes One Time:Included

IND00 MAINE COMMISSION ON INDIGENT LEGAL SERVICES

01095FZ11201 MAINE COMMISSION - INDIGENT LEGAL SVCS

Change Package: C-A-3 Priority: Include: Yes

Description: Establishes positions to create a statewide Appellate and Post-Conviction Review Defender Office, including three Public Service Manager III Positions, four Public Service Manager II positions, nine Public Service Coordinator I positions, and four Paralegal positions, plus associated All Other costs.

Justification: This initiative establishes positions to create a Statewide Public Defender Office to handle Appeals and Post-Conviction Review Cases. The positions established by this initiative will provide for a Director of Appeals and Post Conviction Review, a Deputy Director of Appeals, a Deputy Director for Post-Conviction Review, three Senior Assistant Appellate Defenders, five Assistant Appellate Defenders, one Senior Post-Conviction Defender, two Assistant Post-Conviction Defenders, four Paralegals, one Post-Conviction Mitigation Specialist, and one Post-Conviction Investigator. The number of attorney positions is based on national caseload standards. This initiative also provides for associated All Other costs. This initiative is necessary to implement the recommendation of the Sixth Amendment Center to create a statewide Appellate Defender Office that was provided to the Legislature after a study of indigent legal services in Maine performed at the request of the Legislature.

Table with 3 columns: Category, Part A Initiatives & Other FY 22, Part A Initiatives & Other FY 23. Rows include Positions (LEGISLATIVE COUNT, TOTAL) and Appropriations and Allocations (PERSONAL SVCS, ALL OTHER, TOTAL).

Change Package: C-A-4 Priority: Include: Yes

Description: Provides additional funding for Indigent Legal Services.

Justification: This initiative provides funding necessary to cover the cost of Commission operations at their current level during fiscal year 2020-2021 and fiscal year 2021-2022. Since fiscal year 2016-2017, the Commission has routinely received All Other funding of \$18.3 million. This amount has been sufficient to cover the cost of Indigent Legal Services, and the Commission has operated with this flat-funding amount for a number of years now. The Commission continues to project that it will require \$18.3 million per year to fund current operations. Because of one-time funding in fiscal year 2019-2020, the All Other baseline budget for each year of the current biennium equals \$15.5 million per fiscal year. This initiative is necessary to meet the State's constitutional obligation to provide representation at State expense to indigent clients.

Table with 3 columns: Category, Part A Initiatives & Other FY 22, Part A Initiatives & Other FY 23. Rows include Appropriations and Allocations (ALL OTHER, TOTAL).

Change Package: C-A-5 Priority: Include: Yes

Description: Provides additional funding for Indigent Legal Services

Justification: This initiative provides funding to raise the hourly rate paid to attorneys representing indigent clients who are entitled to representation at State expense from \$60.00 per hour to \$100 per hour. This initiative implements the recommendation of the Sixth Amendment Center provided to the Legislature after a study of indigent legal services in Maine performed at the request of the Legislature. This initiative is necessary of ensure the provision of quality legal services to indigent clients.

Table with 3 columns: Category, Part A Initiatives & Other FY 22, Part A Initiatives & Other FY 23. Rows include Appropriations and Allocations (ALL OTHER, TOTAL).

Central Office

Position	Classification	Classification Code	Step 1	Step 3	Step 5
Training Director	Public Service Coordinator II	MA30	\$59,092.80	\$64,916.80	\$81,099.20
Practice Standards/Quality Assurance Attorney	Public Service Coordinator II	MA30	\$59,092.80	\$64,916.80	\$81,099.20
Finance/Voucher Attorney	Public Service Coordinator II	MA30	\$59,092.80	\$64,916.80	\$81,099.20
Trial Resource Attorney	Public Service Coordinator II	MA30	\$59,092.80	\$64,916.80	\$81,099.20
Mental Health/SA/Sentencing Resource Attorney	Public Service Coordinator II	MA30	\$59,092.80	\$64,916.80	\$81,099.20
Audit Director	Auditor III	0613	\$47,278.00	\$52,041.60	\$64,729.60
Field Examiner	Field Examiner II	0332	\$35,588.80	\$38,688.00	\$47,944.00
Field Examiner	Field Examiner II	0332	\$35,588.80	\$38,688.00	\$47,944.00
Voucher Review Staff	Auditor I	0611	\$35,588.80	\$38,688.00	\$47,944.00
Training Staff	Public Service Coordinator I	CA21	\$40,518.40	\$44,324.80	\$55,203.20
		Salary total	\$490,026.80	\$537,014.40	\$669,260.80

Bar dues	\$1,325.00
Cell phone	\$3,087.00
Eyeglass reimbursement	\$600.00
Legal research subscription	\$3,360.00
Mileage	\$4,800.00
Office furniture	\$23,300.00
Office supplies	\$7,500.00
OIT/TELCO	\$26,386.00
Service center (Payroll processing)	\$5,628.40
Subscriptions (rule and statute books)	\$350.00
Ancillary Cost Total	\$76,336.40

Kennebec County Public Defender Office

Position	Classification	Classification Code	Step 1	Step 3	Step 5
District Defender	Public Service Manager III	MO39	\$88,379.20	\$97,198.40	\$121,659.20
Deputy District Defender	Public Service Manager III	MH36	\$76,336.00	\$83,990.40	\$104,998.40
Serious Felony Defender	Public Service Manager II	MA33	\$66,788.80	\$73,507.20	\$91,665.80
Serious Felony Defender	Public Service Manager II	MA33	\$66,788.80	\$73,507.20	\$91,665.80
Senior Assistant Public Defender	Public Service Manager II	MA31	\$61,443.20	\$67,537.60	\$84,489.60
Senior Assistant Public Defender	Public Service Manager II	MA31	\$61,443.20	\$67,537.60	\$84,489.60
Assistant Public Defender	Public Service Coordinator I	CA28	\$54,579.20	\$60,091.20	\$75,088.00
Assistant Public Defender	Public Service Coordinator I	CA28	\$54,579.20	\$60,091.20	\$75,088.00
Assistant Public Defender	Public Service Coordinator I	CA28	\$54,579.20	\$60,091.20	\$75,088.00
Investigator	Public Service Coordinator I	CA21	\$40,518.40	\$44,324.80	\$55,203.20
Investigator	Public Service Coordinator I	CA21	\$40,518.40	\$44,324.80	\$55,203.20
Social Worker	Clincial Social Worker	5121	\$44,865.60	\$49,129.60	\$60,923.20
Social Worker	Clincial Social Worker	5121	\$44,865.60	\$49,129.60	\$60,923.20
Paralegal	Paralegal	0884	\$35,588.80	\$36,688.00	\$47,944.00
Paralegal	Paralegal	0884	\$35,588.80	\$36,688.00	\$47,944.00
Paralegal	Paralegal	0884	\$35,588.80	\$36,688.00	\$47,944.00
Office Manager	Office Specialist II SUPV	SAPV	\$40,393.60	\$44,761.60	\$56,534.40
Salary Totals			\$902,844.80	\$985,286.40	\$1,236,851.60

OIT/TELCO	\$64,071.00
Cell phone	\$4,452.00
Office furniture	\$39,610.00
Bar dues	\$2,385.00
Mileage	\$4,500.00
Eyeglass reimbursement	\$1,000.00
Service center (Payroll processing)	\$9,568.28
Office supplies	\$12,750.00
Subscriptions (rule and statute books)	\$630.00
Legal research subscription	\$4,320.00
Ancillary Cost Total	\$143,286.28

Appellate Public Defender Office

Position	Classification	Classification Code	Step 1	Step 3	Step 5
<i>Appellate Division</i>					
Appeal and Post-Conviction Review Director	Public Service Manager III	MO39	\$88,379.20	\$97,198.40	\$121,659.20
Appellate Division Deputy Director	Public Service Manager III	MH36	\$76,336.00	\$83,990.40	\$104,998.40
Senior Assistant Appellate Defender	Public Service Manager II	MA31	\$61,443.20	\$67,537.60	\$84,489.60
Senior Assistant Appellate Defender	Public Service Manager II	MA31	\$61,443.20	\$67,537.60	\$84,489.60
Senior Assistant Appellate Defender	Public Service Manager II	MA31	\$61,443.20	\$67,537.60	\$84,489.60
Assistant Appellate Defender	Public Service Coordinator I	CA28	\$54,579.20	\$60,091.20	\$75,088.00
Assistant Appellate Defender	Public Service Coordinator I	CA28	\$54,579.20	\$60,091.20	\$75,088.00
Assistant Appellate Defender	Public Service Coordinator I	CA28	\$54,579.20	\$60,091.20	\$75,088.00
Assistant Appellate Defender	Public Service Coordinator I	CA28	\$54,579.20	\$60,091.20	\$75,088.00
Assistant Appellate Defender	Public Service Coordinator I	CA28	\$54,579.20	\$60,091.20	\$75,088.00
Paralegal	Paralegal	0884	\$35,588.80	\$36,688.00	\$47,944.00
Paralegal	Paralegal	0884	\$35,588.80	\$36,688.00	\$47,944.00
Paralegal	Paralegal	0884	\$35,588.80	\$36,688.00	\$47,944.00
<i>Post-Conviction Division</i>					
Post-Conviction Review Division Deputy Director	Public Service Manager III	MH36	\$76,336.00	\$83,990.40	\$104,998.40
Senior Assistant Post-Conviction Defender	Public Service Manager II	MA31	\$61,443.20	\$67,537.60	\$84,489.60
Assistant Post-Conviction Defender	Public Service Coordinator I	CA28	\$54,579.20	\$60,091.20	\$75,088.00
Assistant Post-Conviction Defender	Public Service Coordinator I	CA28	\$54,579.20	\$60,091.20	\$75,088.00
Paralegal	Paralegal	0884	\$35,588.80	\$36,688.00	\$47,944.00
Mitigation Specialist	Public Service Coordinator I	CA21	\$40,518.40	\$44,324.80	\$55,203.20
Investigator	Public Service Coordinator I	CA21	\$40,518.40	\$44,324.80	\$55,203.20
Salary Totals			\$1,092,270.40	\$1,191,369.60	\$1,497,412.80
Bar dues			\$3,710.00		
Cell phone			\$6,850.00		
Eyeglass reimbursement			\$1,200.00		
Legal research subscription			\$6,720.00		
Mileage			\$500.00		
Office furniture			\$46,600.00		
Office supplies			\$15,000.00		
OIT/TELCO			\$59,972.00		
Printing/Binding/Mailing			\$30,000.00		
Service center (Payroll processing)			\$11,256.80		
Subscriptions (rule and statute books)			\$980.00		
Ancillary Cost Total			\$182,788.80		

(2.)

Rulemaking Process

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: OCTOBER 14, 2020

Attached are drafts of Chapter 2 and Chapter 3, the Commission's major substantive rules with track changes reflecting the recommendations of the Criminal Standards sub-committee and the Child Protective/Involuntary Commitment sub-committee. Also attached is a timeline illustrating the steps necessary for the Commission to meet the deadline for submission of major substantive rule amendments to the upcoming Legislature. Finally, attached is a memorandum from A.A.G. Hudson outlining the rulemaking process in general.

Rulemaking Timeline

November 2/3/4 – meeting to vote on final language

November 2-10 – legal pre-review done by AAG Hudson

November 10 – submit to Secretary of State's office for publication

November 18 – Secretary of State publishes the rules

December 7 – public hearing

December 17 – public comment deadline

December 28 – Commission meeting to adopt rules and send to AG office for review

December 28-January 8 – AG office review

January 8 – deadline for submission to Legislature

Memorandum

OFFICE OF ATTORNEY GENERAL

State House Station 6
Augusta, Maine 04333-
0006
Phone:

FAX: 626-8518
email:
megan.hudson@maine.gov

TO: Maine Commission on Indigent Legal Services

FROM: Megan Hudson, Assistant Attorney General

DATE: October 8, 2020

SUBJECT: Administrative Rulemaking Process and Timelines

The Maine Administrative Procedure Act establishes a uniform, comprehensive set of procedures covering the administrative actions of state agencies, including rulemaking. This is a brief overview of the general process and associated timelines.

Background Information

Definitions

- “Rule” – The term “rule” does not include policies or memoranda concerning only the internal management of an agency or the State Government. These policies or memoranda are not judicially enforceable. The term “rule” also does not include any form, instruction or explanatory statement of policy that in itself is not judicially enforceable, and that is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges. (5 M.R.S. § 8002(9)(B)(1) and (4))
- There are 2 categories of rules:
 - Routine technical rules. Routine technical rules are procedural rules that establish standards of practice or procedure for the conduct of business with or before an agency and any other rules that are not major substantive rules. (5 M.R.S. § 8071(2)(A))
 - Major substantive rules. Major substantive rules are rules that, in the judgment of the Legislature:
 - Require the exercise of significant agency discretion or interpretation in drafting; or

- Because of their subject matter or anticipated impact, are reasonably expected to result in a significant increase in the cost of doing business, a significant reduction in property values, the loss or significant reduction of government benefits or services, the imposition of state mandates on units of local government as defined in the Constitution of Maine, Article IX, Section 21, or other serious burdens on the public or units of local government. (5 M.R.S. § 8071(2)(B))
- Major substantive rules require an additional step in the rulemaking process. All major substantive rules must be submitted to the Legislature for review and approval.

Maine Commission on Indigent Legal Services Rule Categories

The Legislature has given the Commission the power to adopt rules to carry out the purposes of Title 4, Chapter 37. Rules adopted by the Commission pursuant to this authority are routine technical rules, except for the following rule types:

- Rules adopted to establish standards prescribing minimum experience, training and other qualifications for contract counsel and assigned counsel; and
- Rules adopted to establish rates of compensation for assigned counsel and contract counsel.

The Commission is statutorily required to develop standards governing the following areas:

- Standards governing eligibility for indigent legal services. The eligibility standards must take into account the possibility of a defendant's or civil party's ability to make periodic installment payments toward counsel fees;
- Standards prescribing minimum experience, training and other qualifications for contract counsel and assigned counsel;
- Standards for assigned counsel and contract counsel case loads;
- Standards for the evaluation of assigned counsel and contract counsel. The commission shall review the standards developed pursuant to this paragraph every 5 years or upon the earlier recommendation of the executive director;
- Standards for independent, quality and efficient representation of clients whose cases present conflicts of interest;
- Standards for the reimbursement of expenses incurred by assigned counsel and contract counsel; and
- Other standards considered necessary and appropriate to ensure the delivery of adequate indigent legal services. (4 M.R.S. § 1804(2))

The Commission is also statutorily required to, among other things, do the following:

- Establish processes and procedures consistent with commission standards to ensure that office and contract personnel use information technology and case load management systems so that detailed expenditure and case load data are accurately collected, recorded and reported;
- Develop criminal defense, child protective and involuntary commitment representation training and evaluation programs for attorneys throughout the State to ensure an adequate pool of qualified attorneys;
- Establish minimum qualifications to ensure that attorneys are qualified and capable of providing quality representation in the case types to which they are assigned, recognizing that quality representation in each of these types of cases requires counsel with experience and specialized training in that field;
- Establish rates of compensation for assigned counsel;
- Establish a method for accurately tracking and monitoring case loads of assigned counsel and contract counsel;
- Develop an administrative review and appeal process for attorneys who are aggrieved by a decision of the executive director, or the executive director's designee, determining:
 - Whether an attorney meets the minimum eligibility requirements to receive assignments or to receive assignments in specialized case types pursuant to any commission rule setting forth eligibility requirements;
 - Whether an attorney previously found eligible is no longer eligible to receive assignments or to receive assignments in specialized case types pursuant to any commission rule setting forth eligibility requirements; and
 - Whether to grant or withhold a waiver of the eligibility requirements set forth in any commission rule;
- Establish processes and procedures to acquire investigative and expert services that may be necessary for a case, including contracting for such services;
- Establish procedures for handling complaints about the performance of counsel providing indigent legal services; and
- Develop a procedure for approving requests by counsel for authorization to file a petition as described in section 1802, subsection 4, paragraph D. (An indigent defendant or party or a juvenile for the purpose of filing, on behalf of that indigent defendant or party or juvenile, a petition for certiorari to the Supreme Court of the United States from an adverse

decision of the Law Court on a case for which services were previously provided to that defendant or party or juvenile pursuant to paragraph A, B or C.) (4 M.R.S. § 1804(3))

Rulemaking Process and Timelines

Routine technical rules and major substantive rules have very similar processes. For both types of rules:

- The Commission votes to approve the language of the proposed rules/rule changes and begin the rulemaking process.
- The rules are submitted to the Office of the Attorney General for a legal pre-review. (Executive Order 4 FY 19/20)
- The rules/rule changes are then submitted to the Secretary of State for publication. The notice of proposed rulemaking is published by the Secretary of State. (5 M.R.S. § 8053(5)) Notification of the proposed rules/rule changes must also be provided to certain interested parties. (5 M.R.S. § 8053(1))
- The public is given an opportunity to comment on the proposed rules/rule changes through written submissions or comments at public hearings. (5 M.R.S. § 8053(5)(A))
 - If the proposed rule is a major substantive rule the Commission must hold a public hearing. (5 M.R.S. § 8052(1))
- The Commission addresses all comments and provides a written rationale for adopting or failing to adopt the suggested changes. (5 M.R.S. § 8052(5))
- If, after the comments are received, the rule/rule changes that the Commission intends to adopt are substantially different from what was originally proposed, the rule/rule changes must go back to the Secretary of State for an additional comment period. If comments are received, the Commission again reviews them and provides a written rationale. This republication/comment period requirement continues if the Commission continues to make substantive changes in response to comments. (5 M.R.S. § 8052(B))

For routine technical rules, the Commission then votes to adopt the proposed rule/rule changes. The adopted rule/rule changes are submitted to the Office of the Attorney General for a form and legality review and, once approved, submitted to the Secretary of State for filing. (5 M.R.S. §§ 8056(1)(A) and (B))

For major substantive rules, when the proposed rules/rule changes are at the adoption stage, the Commission provisionally adopts the proposed rules/rule changes and then send them to the Legislature for Committee and final review. (5 M.R.S. § 8072(1)) The legislative review process is as follows:

- The agency submits the provisionally adopted rule to the Legislature.
- The rule and a resolve proposing to allow the agency to adopt the rule are referred to the committee with jurisdiction over the rule's subject matter. (5 M.R.S. § 8072(3))
- The committee generally holds a public hearing and work session on the resolve in the same manner as it does for other bills and resolves. (5 M.R.S. § 8072(4))
- The committee reviews the proposed rules and makes its recommendation as to whether and how the rule should be allowed to go forward. The resolve is the vehicle through which the committee makes its recommendations on the rule. (5 M.R.S. § 8072(5))
- The resolve with the committee's report(s) is reported to the House or Senate and acted upon in the same manner as any other bill or resolve. The agency's ability to finally adopt the rule depends on the final disposition and content of the finally passed resolve.

After reviewing the rule and corresponding resolve, the committee may vote to recommend that the Legislature:

- Pass the resolve without amendment (this authorizes the agency to finally adopt the rule as drafted);
- Pass the resolve as amended to authorize the agency to finally adopt the rule if certain changes are made, or to finally adopt only part of the rule; or
- Pass the resolve as amended to specify that the agency may not adopt the rule.

If the passed resolve authorizes the agency to adopt part or all of the rule, the agency must do so within 60 days of the effective date of the resolve, unless the resolve specifies a different date. (5 M.R.S. § 8072(8))

Timeframes

Once the Commission votes to approve the proposed rule/rule changes the rules/rule changes are sent to the Office of the Attorney General for legal pre-review. There is no specified time by which this pre-review must be completed. While expedited review can be requested, it is dependent on the availability of the assigned AAG.

Statutory timeframes kick in once the Commission submits the approved proposed rules/rule changes to the Secretary of State for publication. The proposed rules/rule changes and all required forms must be filed the Tuesday before the following Wednesday's publication (8 days later).

- If no public hearing is scheduled, the deadline for submission of public comments must be at least 30 days after the date of publication of the notification of the proposed rule/rule change.

- The Commission will need to have at least one meeting following the closure of the public comment period to review comments, prepare written responses, and determine if it would like to modify the proposed rule/rule changes. If any of the amendments are substantive, the Commission must publish the amended proposed rule/rule changes and allow for another public comment period (again, at least 30 days from the date of publication).
 - The Commission has 120 days from the end of the public comment period to adopt the proposed rules/rule changes.
 - The adopted rules are then submitted to the Office of the Attorney General for a form and legality review (this will be a different AAG than the AAG that did the legal pre-review). This review must be completed within 150 days from the end of the public comment period.
 - Once the rules/rule changes are approved by the Office of the Attorney General the rule packet will be filed with the Secretary of State. The rules/rule changes go into effect 5 days after filing.
- If a public hearing is held, it must be scheduled between 18-25 days after the notice of proposed rulemaking was published.
 - The public comment deadline must be at least 10 days after the public hearing.
 - The Commission will need to have at least one meeting following the closure of the public comment period to review comments, prepare written responses, and determine if any rule amendments require re-publication.
 - The Commission has 120 days from the end of the public comment period to adopt the proposed rules/rule changes.
 - The adopted rules are then submitted to the Office of the Attorney General for a form and legality review (this will be a different AAG). This review must be completed within 150 days from the end of the public comment period.
 - Once the rules/rule changes are approved by the Office of the Attorney General the rule packet will be filed with the Secretary of State. The rules/rule changes go into effect 5 days after filing.

If the rules are major substantive rules, the Commission only provisionally adopts them and then submits them to the Legislature.

- If the major substantive rules are submitted before 5 p.m. on January 8, 2021, the Legislature is required to consider them. The Legislature may decline to act on rules submitted after this deadline.

- The reviewing committee may choose to hold a public hearing on the rule. The committee must report to the Legislature its recommendation no later than 30 days before the statutory adjournment of the legislative review session. The committee recommendation may be submitted to and considered by a special session.
- Once the Legislature passes the resolve allowing the Commission to adopt the rules (in whole or in part) the Commission must have a meeting and vote to formally adopt the rules.
- The rules are then submitted to the Secretary of State. The rules become effective 30 days after they are filed with the Secretary of State or at a later date specified by the agency (unless otherwise specified by law).

Chapter 2: STANDARDS FOR QUALIFICATIONS OF ASSIGNED COUNSEL

Summary: This chapter establishes the standards prescribing minimum experience, training and other qualifications for contract counsel and assigned 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, training, and other eligibility requirements. The MCILS 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 enact 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 appointments 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. MCILS Executive Director or their designee shall develop an application process for an attorney seeking appointment(s) 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 MCILS Executive Director or their designee.
3. The MCILS 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 MCILS 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
4. The MCILS 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 MCILS 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 MCILS Executive Director or their designee, to remove an attorney from any roster at any time.
5. All attorneys must comply with all standards and rules of MCILS.
6. The MCILS 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 currently on the roster in the geographical area the applicant attorney plans to practice.
7. The MCILS Executive Director or their designee shall develop a process to manage the rosters to encourage qualified attorneys to apply, to keep the rosters at the number of attorneys appropriate for that prosecutorial district or county, encourage efficient use of MCILS resources and to keep attorneys at near maximum caseloads in a single prosecutorial district if possible. To encourage newly admitted attorneys to apply to be rostered and to grow the specialized panels.

SECTION 1C. General Policies Applicable to All Assigned Counsel

1. Rostered counsel must register with MCILS annually in a manner prescribed by MCILS. Rostered counsel must comply with all applicable MCILS rules and procedures. Rostered counsel must also comply with any MCILS investigation of complaints, billing discrepancies, audits, or other information that, in the view of the MCILS Executive Director, concerns the question of whether the attorney is fit to remain on the roster.
2. By accepting assignment of any case through MCILS, rostered counsel must comply with all MCILS policies and procedures.
3. Rostered counsel shall not knowingly make a false statement of material fact or law to the court, MCILS, or a third person.

4. Rostered counsel has no duty to execute any directive of the client which is illegal or a violation of counsel's ethical duties.
5. To provide quality representation, rostered counsel must be familiar with Maine law and procedure, including changes and developments in the law. Rostered counsel must be familiar with substantive criminal law and its application to your client's case. It is rostered counsel's obligation to remain current with changes regarding substantive criminal law, any court rule, or statutes. Where appropriate and possible, rostered counsel should also be informed of the practices of the judge before whom a case is pending.
6. Rostered counsel representing juveniles must be familiar with juvenile non custody placement options and dispositional alternatives, child development, adolescent brain development, adolescent mental health diagnosis and treatment, and adolescent competency.
7. Prior to accepting a MCILS assignment, rostered counsel should have sufficient experience or training to provide quality representation. Rostered counsel should accept the more serious and complex criminal cases only after having sufficient experience and/or training. Where appropriate, rostered counsel should consult with more experienced counsel to acquire knowledge and familiarity with all facts of criminal representation, including information about practices of prosecutors and other court personnel.
8. Rostered counsel should participate in skills training and education programs in order to maintain and enhance skills.
9. Before agreeing to act as defense counsel or accepting an assignment, rostered counsel has an obligation to make sure that they have available sufficient time, resources, knowledge and experience to offer quality representation to a defendant in a particular matter. If it later appears that rostered counsel is unable to offer quality representation in the case, rostered counsel should move to withdraw.
10. Rostered counsel should not carry a workload that, by reason of its excessive size, interferes with the rendering of quality representation, endangers the client's interest in the speedy disposition of charge(s), or may lead to the breach of professional obligations.
11. Rostered counsel must be alert to all potential and actual conflicts of interest that would impair their ability to represent a client. Where appropriate, rostered counsel may be obliged to seek an advisory opinion on any potential conflict.
12. 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. Rostered counsel must ensure MCILS and the court has the ability to contact the attorney by mail, email, and telephone.
13. Rostered counsel shall not accept any compensation or other consideration for assigned cases except through MCILS.
14. Rostered counsel should act with reasonable diligence and promptness in

representing a client.

15. Rostered counsel should avoid unnecessary delay in the disposition of cases. Rostered counsel should be punctual in attendance at court proceedings and in the submission of all motions, briefs and other papers. Rostered counsel should emphasize to the client and all witnesses the importance of punctuality in attendance at court.
16. Rostered counsel must treat the client in a courteous and professional manner. Romantic or sexual contact between rostered counsel and client, or between a supervising rostered attorney and supervisee rostered attorney or staff, is strictly prohibited.
17. Rostered counsel should take all reasonable steps necessary to ensure that confidential communications between rostered counsel and the client are conducted in privacy. This may include making efforts to request that the court and other officials make reasonable accommodations for private discussions between defense counsel and clients in courthouses, lockups, jails, prisons, detention centers, and other places where a client must confer with defense counsel.
18. Service as a MCILS rostered attorney is at the discretion of the MCILS executive director.
19. Rostered counsel must provide MCILS via email in PDF format a copy of all nonstandard or generic motions that are filed on assigned cases with the prosecutor or court. These motions include but are not limited to discovery motions, sanction motions, suppression motions, motions in limine, trial motions, post-trial motions and appellate briefs. These motions must be redacted to comply with all bar requirements and duties owed to a client. MCILS shall create an organized motion bank that is accessible to all rostered counsel and non-rostered defense counsel who are willing to submit copies of motions to MCILS for use in this brief bank.
20. Rostered counsel must provide MCILS via email in PDF format a copy of all transcripts (not transcripts created from discovery materials) from any MCILS assigned case. MCILS shall create an organized transcript bank that is accessible to all rostered counsel and non-rostered defense counsel who are willing to submit copies of case transcripts to MCILS for use in this transcript bank.

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

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

- ~~1. Licensed To Practice Repealed.~~

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

The attorney must register with the Commission annually in a manner prescribed by the Commission. The attorney must comply with all applicable Commission rules and procedures. The attorney must comply with Commission monitoring and performance evaluations. 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.

The attorney must cooperate with monitoring, performance evaluations and provide information as requested regarding complaints or billing discrepancies.

Defense counsel shall not knowingly make a false statement of fact or law to the Court or MCILS.

- ~~3. The executive director must be very mindful of who is rostered as an attorney. Taxpayer funds are being used to pay rostered attorneys. Merely being in good standing with Board of Overseers of the Bar is not sufficient. Rostered attorney should have the same great moral character, ethics, and background as attorneys who are hired to represent the State of Maine or work for reputable firms. If the attorney would not be hired in private practice, they should not be a rostered attorney.~~
- ~~4. The attorney must be in good standing with the Bar of Board Overseers and licensed to practice law in the State of Maine prior to being rostered.~~
- ~~5. The attorney must have completed the XX (training subcommittee to provide a name) prior to being rostered and assigned cases prior to being rostered.~~

6. 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.
7. 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 shall accept such calls only if rostered counsel is not charged for the call.
8. Rostered counsel must maintain a confidential working e-mail account as a means of receiving information from and providing information to MCILS the Courts, and clients.
9. Attorneys applying to be rostered and rostered attorneys must not be convicted of Murder, Manslaughter, or any felony or any crime of moral turpitude or dishonesty including but not limited to convictions for Title 17-A, chapter 9 domestic violence crimes, chapter 11 (Sexual Assaults), Chapter 12 (Sexual Exploitation of Minors), chapter 15 (Theft), 17 (Burglary and Criminal Trespass), Chapter 19 (Falsification in Official Matters), Chapter 23 (Offenses Against the Family), Chapter 25 (Bribery and Corrupt Practices), Chapter 27 (Robbery), Chapter 29 (Forgery and Related Offense), Chapter 35 (Sex Trafficking, Prostitution and Public Indecency), Chapter 37 (Fraud), or similar crimes in a different jurisdiction.
 - a. Attorneys applying to be rostered and rostered attorneys can seek a waiver of the above paragraph. The attorney application or rostered attorney, to be waived in must demonstrate they have completed any sentence that was imposed including probation and payments of fines, completed any appropriate rehabilitative treatment, have recognized the wrongfulness and seriousness of their crime, have not engaged in any professional misconduct since the criminal conviction, and notwithstanding the conviction can demonstrate the requisite honesty, integrity, and qualifications to be rostered.
10. A rostered attorney who has been convicted of a crime enumerated above while rostered cannot receive any new assignments and must reapply to become rostered. The MCILS 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.
11. Attorneys applying to be rostered and rostered attorneys who have convictions for alcohol or drug violations, including but not limited to convictions for Title 17-A, Chapter 45 (Drugs) and Title 29-A, § 2411 (OUI) must demonstrate prior to being rostered or assigned cases that the attorney has completed a substance abuse evaluation and complied with any recommend counseling, has abstained from the use of alcohol or illegal drugs for at least one year since the conviction or is likely to continue to abstain from alcohol or other drugs and that a referral has been made to the Maine Assistance Program for Lawyers and Judges.

12. A rostered attorney who has been convicted of a Title 17-A, Chapter 45 (Drugs) and Title 29-A, § 2411 (OUI) while rostered cannot receive any new assignments until the rostered attorney has completed a substance abuse evaluation and is engaged in any recommend counseling, has abstained from the use of alcohol or illegal drugs for at least one year since the conviction or is likely to continue to abstain from alcohol or other drugs, and that a referral has been made to the Maine Assistance Program for Lawyers and Judges.
13. Rostered attorney must not be in the execution of their sentence including not being on probation, parole or similar situation in a different jurisdiction. Nor shall rostered attorneys be on any sex offender registry while accepting assignments.

SECTION 3. Office, Telephone, and Electronic Mail

The attorney 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.

The attorney 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 maintain a confidential working e-mail account as a means of receiving information from and providing information to the Commission.

The attorney 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 must ensure that the court has the ability to contact the attorney by mail and by telephone.

SECTION 4. Experience and Proficiency

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 child protection cases, 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

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 child protection law including the ability to defend a Preliminary Protection Order Hearing, Jeopardy Hearing, Contested Judicial Review Hearing, and Termination of Parental Rights Hearing, 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. Prior to accepting an MCILS assignment, rostered defense counsel should have the level of expertise and experience required to handle the case. Defense 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, Defense Counsel shall have co-counsel at for two contested hearings prior to representing a client on their own in a contested hearing. If necessary, defense counsel should consult with a mentor/resource counsel or request experienced co-counsel to ensure quality representation of the parent.

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.~~

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

1. 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.
2. Rostered counsel shall meet any specific training requirements of any specialized panels.
3. The attorney shall meet any specific training requirements of the specialized standard panel regarding child protection, Federal and State statutes and related 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. If a contested hearing is scheduled, including but not limited to Preliminary Protection Order, Jeopardy Order, Judicial Review and Termination of Parental Rights, and defense counsel has not participated in the subject hearing or has less than 6 months of child protection experience, the defense counsel must file a request for appointment of co-counsel through MCILS.

4. 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.
5. CLE hours are counted toward the workload standards.
6. If a training fulfills the requirements for more than one panel, credit for the training will be applied to maintain certification to the associated panels, but required CLE hours payment will be calculated only for the actual CLE time (e.g., if 2 hours of training applies to maintain certification for both panel A and panel B, payment would be for the 2 hours of training, not 4 hours and only counts as two 2 hours of minimum 8 hours required).

SECTION 6. Removal or Suspension from the Roster

1. The MCILS 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 MCILS 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 MCILS 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 MCILS Executive Director's decision to remove or suspend an attorney from the roster shall be in writing and shall reflect the MCILS Executive Director's reasoning in a manner sufficient to inform the attorney and the public of the basis for the MCILS Executive Director's action.
2. ~~Rostered A~~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 provision in this section are in addition to and compliment any other policy or rule of MCILS.
4. The MCILS 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. Notice of Complaints or Potential Conflicts

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

- a. Rostered counsel has been charged by criminal complaint or indictment. Rostered counsel has an ongoing obligation to keep the MCILS Executive Director or their designee apprised of the allegation and the outcome of said allegation;
- b. 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;
- c. Rostered counsel is the subject of disciplinary action before any non-attorney professional licensing board or agency;
- d. 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;
- e. A court or agency has found the attorney engaged in conduct which is subject to mandatory reporting under the Maine Rules of Professional Conduct;
- f. Any condition or circumstance that exist that renders the rostered attorney unable to comply with applicable MCILS Performance Standards or Policies;
or
- g. 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 three business days of learning of such complaint or disciplinary action, provide a copy of the complaint or petition to the MCILS Executive Director or their designee. The attorney shall also provide to the MCILS 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 MCILS 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 MCILS 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 MCILS executive director in deciding if the attorney is eligible to be rostered.

SECTION 8. Appointment of Counsel and Notice of Appointment to the Rostered Attorney

5. The MCILS executive director or their designee shall be responsible to appoint counsel to defendants who qualify for appointed counsel. Notice of appointment shall be transmitted to assigned counsel via email within 24 hours of the appointment.

a. MCILS shall have a MCILS staff in the court for all LOD proceedings. The MCILS staff shall appoint assigned attorney according to the MCILS standards for appointing counsel with special attention given to a rostered attorneys caseload. MCILS staff shall immediately notify the defendant of the assigned rostered counsel's name, email, and phone number.

b. The Court shall determine if a defendant qualifies for appointed counsel. It

shall be the judiciary's responsibility to ensure the financial screening of defendants.

6. (Alternative to 1) If the Court's retains the appointment of assigned counsel, the MCILS executive director or their designee shall work closely with the court to ensure notice of appointment is provided to MCILS and assigned counsel within 24 hours of the defendant's first appearance or appointment.
7. If a defendant qualifies for assigned counsel and is asking for a specific rostered counsel to be appointed that rostered attorney should be appointed if that rostered counsel is qualified to accept the appointment. If the defendant qualifies for assigned counsel and is not asking for specific rostered attorney to be appointed, then the next qualified rostered attorney shall be appointed.
8. A newly rostered attorney cannot be assigned a case until a rostered mentor has been assigned.
9. The rostered lawyer of the day who is assisting a defendant who is assigned counsel must email the assigned rostered counsel on the same day of the assignment advising rostered counsel of the assignment. The email shall include a copy of the charging instrument, the defendant's address and phone number, and date of birth. This email should also include information that is unique to the client's situation. For example, this would include mental health needs, a Title 15, section 101 evaluation was ordered or is recommended, the client needs medical attention, the client has injuries that need to be preserved for a potential defense, or unique family circumstances. The MCILS executive director or their designee should be copied on the appointment. Appointed counsel can assume they are appointment and should immediately put the case in to the MCILS billing system and begin representation of the client.
10. If the court fails to address the assignment of counsel for a defendant who request assigned counsel, the lawyer of the day should impress upon the court the need to appoint counsel that day. This should include providing defendants with an indigency affidavit, requesting them to complete it, and returning it to counsel who shall provide it to the court prior to the defendant leaving for the day. If the court does not address the assignment of counsel for a defendant who submitted an indigency affidavit, the lawyer of the day should email the MCILS executive director or their designee who shall be responsible for confirming the defendant is eligible for counsel and appoint counsel.
11. Murder Cases: A rostered attorney appointed to a murder and non OUI manslaughter case must recommended to the MCILS executive director or their designee the name of a rostered murder and non OUI manslaughter panel attorney and an attorney who is not murder qualified to serve as co-counsel. The MCILS executive director or their designee shall appoint those attorneys or other qualified rostered counsels at the discretion of the MCILS executive director or their designee. Rostered counsel not qualified to accept murder and non OUI manslaughter cases must express in writing to the MCILS executive director a desire to be appointed co-counsel on murder and non OUI manslaughter cases to seek murder and non OUI manslaughter qualifications. The MCILS executive

director or their designee shall keep this list of rostered counsel seeking murder and non OUI manslaughter qualifications and update it as necessary.

12. Sex Offenses: A rostered attorney appointed to a sex offense case must recommended to the MCILS executive director or their designee the name of an attorney who is not sex offense qualified to serve as co-counsel. The MCILS executive director or their designee shall appoint the recommended attorney or other qualified attorney at the discretion of the MCILS executive director or their designee. Rostered counsel must express in writing a desire to be appointed as co-counsel on sex offense cases to seek sex offense qualification. The MCILS executive director or their designee shall keep this list of rostered counsel seeking sex offender qualifications and update it as necessary. It is recognized that at times a sex offense may require two sex offender rostered attorneys in addition to the attorney seeking to become qualified. The MCILS executive director or their designee shall appoint a second sex offender rostered attorney upon request and for good cause shown.
13. Bind Over Hearings: Two attorneys shall be appointed to every bind over hearing. One attorney must be a bind over rostered counsel and one attorney must be on the adult murder, sex offense or major felony panel. The same attorney can meet both qualifications but there must be at least two attorneys.
14. Any MCILS rostered attorney who after a Dispositional Conference is confident that a case is proceeding to trial and the Defendant is charged with a felony should recommended to the MCILS executive director or their designee the name of a rostered attorney who is not qualified to handle the type of felony proceeding to trial or any rostered attorney who has not had at least 3 jury trials to serve as co-counsel. The MCILS executive director or their designee shall appoint the recommended rostered attorney or a different rostered attorney at the discretion of the MCILS executive director or their designee as co-counsel.
15. A rostered counsel who is having their first 2 jury or adjudicator hearings or a combination thereof must have mentor counsel appointed and the mentor counsel should be a different rostered counsel for each trial.

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

EFFECTIVE DATE:
June 25, 2010

AMENDED: (need to add amendment date)

Chapter 3: ELIGIBILITY REQUIREMENTS FOR SPECIALIZED CASE TYPES

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

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

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

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

3. ~~Serious-Violent~~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), 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.
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 attorney means a rostered attorney who was first rostered under these standards or prior MCILS standards and were authorized to accept assignments no more than 9 months prior to enactment of this version of the standards.

SECTION 2. Powers and Duties of the Executive Director

1. The Executive Director, or his or her designee, shall develop an application process for an attorney seeking appointment(s) in Specialized Case Types to demonstrate the minimum qualifications necessary to be placed on Specialized Case Type Rosters. An applicant for a Specialized Case Type Roster must present additional information beyond the minimum requirements of this Chapter if requested by the Executive Director, or his or her designee.
2. The Executive Director, or his or her designee, shall have the sole discretion to make the determination if an attorney is qualified to be placed on a Specialized Case Type Roster. In addition, the Executive Director, or his or her designee, shall have the sole discretion, to grant or deny a waiver pursuant to, and in accordance with, Section 4.
3. The Executive Director, or his or her designee, may, in his or her sole discretion, remove an attorney from a Specialized Case Type Roster at any time if the attorney is not meeting the minimum qualifications and standards as determined by the Executive Director, or his or her designee.
4. This subsection does not exempt an attorney from satisfying the requirements of this Chapter at any time thereafter or limit the authority of the Executive Director, or his or

her designee, to remove an attorney from any Specialized Case Type Roster at any time.

SECTION 3. Minimum Eligibility Requirements for Specialized Case Types.

1. 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; Replead~~
- ~~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 attorney;
- H. Have been co-counsel on at least 3 Murder or non OUI Manslaughter assigned counsel 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 submitted 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 manslaughters.

M. Letters of reference shall also be submitted upon the request of the MCILS 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 meet 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 attorney;~~
- ~~G. Have been co-counsel on at least 3 SORNA registerable criminal sex offense cases;~~
- ~~H. Have completed a minimum of 50 felony assignments;~~
- ~~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. Letters of reference shall also be submitted upon the request of the MCILS Executive Director or their designee; 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 meet 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 FeloniesMajor 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 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 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. Letters of reference shall also be submitted upon the request of the MCILS Executive Director or their designee; 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 meet 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 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 attorney;
- H. Have been an attorney of record in at least 1 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. Letters of reference shall also be submitted upon the request of the MCILS Executive Director or their designee; 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 meet any specialized panel CLE requirements to remained 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 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 attorney;
- H. Have been the attorney of record for at least 1 jury trial or adjudicatory hearing;
- 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. Letters of reference shall also be submitted upon the request of the MCILS Executive Director or their designee; 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 meet 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. Agree to work with a rostered mentored attorney for at least 18 months. The attorney will be provisional 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. Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee; 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 meet 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 MCILS executive director or their designee. To continue representing the juvenile the rostered attorney must me the following requirements. If the rostered attorney does not meet the requirements, then the MICLS executive director or their designee shall appoint a second rostered attorney who does meet the requirements. Consistent with section 8(k) two attorneys shall be appointed 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 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 meet 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 designee, by the author.

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

8. **Repealed.**

9. ~~Law Court Appeals~~Appellate Panel. In order to be rostered for appellate assignments ~~for adult 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. All work must be reviewed by a MCILS staff attorney or rostered mentor attorney who is on the appellate panel prior to the submission of any filings with the appellate court. The MCILS executive director or their designee shall develop a~~

procedure to ensure sufficient time is provided for reviews;

- J. 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;
 - K. Must complete regular reviews of recent Maine Law Court, US District Court, the US First Circuit Court of Appeals and US Supreme Court opinions and write a synopsis of the decision and how it might impact MCILS rostered attorneys' practice or how the opinion alters current law. The MCILS executive director or their designee shall distribute these synopses to all rostered counsel and develop a rotation amongst rostered appellate counsel as to who is to write the synopsis and when it shall be completed. Appellate counsel shall be paid for the cases they review and write synopsis on.
 - L. 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;
 - M. Must have access to online legal research such as Westlaw, Lexus/Nexus, Casemaker, beyond the use of a search engine such as Google.
 - N. Letters of reference shall be submitted upon the request of the MCILS Executive Director or their designee;
 - O. 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 appellate panel except the same CLE panel requirements cannot be repeated in 2 consecutive years; and
 - P. 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. Letters of reference and writing samples shall also be submitted upon the request of the Executive Director, or his or her designee; and
—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 adult LOD 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 a mentor for future felony appointments after the first 2 appointments if such a requested is submitted in writing to the MCILS executive director or their designee. The MCILS 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 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 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; 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 meet 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 MICLES staff attorney or mentor attorney rostered attorney 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 mentor rostered attorney 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 the same rostered mentor attorney shadowing for a minimum of 5 times. The MCILS staff attorney or mentor rostered staff attorney must recommend to the MCILS 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 MCILS 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 meet 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 MICLE staff attorney or mentor rostered attorney for a minimum of 2 occasions. Shadowing means the shadowing attorney must be present at all time with the MCILS staff attorney or mentor rostered attorney from the time they arrive at court

until the LOD proceeding is concluded including the review of 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 attorney rostered for a minimum of 3 times. The MCILS staff attorney or mentor rostered staff attorney must recommend to the MCILS 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 MCILS 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 100 MCILS assigned cases. Cannot do shadowing until this provision is meet;
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 meet 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.

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 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 MCILS 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.
 - (b) Exceptional circumstances does not include the lack of qualified attorneys on a panel or the lack of qualified attorneys in a geographical location.

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

(3.)

Attorney Assignments

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
CC: ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR
SUBJECT: ATTORNEY ASSIGNMENTS
DATE: October 14, 2020

Commissioner LeBrasseur requested that this item be placed on the agenda for discussion.

(4.)

**OPEGA Report
Discussion**

Executive Session Required

(5.)

**Attorney Investigation
Materials Discussion**

Executive Session Required