

**Maine Commission on Indigent Legal Services  
November 9, 2010**

**Minutes**

**Present:** Ron Schneider, Ken Spirer, Kim Moody, Marvin Glazier, Sally Sutton

**Staff:** John Pelletier, Jennifer Smith, Steve Carey

<b>Agenda Item</b>	<b>Discussion</b>	<b>Outcome/Action Item/Responsible Party</b>
Approval of October 12, 2010 Commission Meeting Minutes	Ron welcomed Steve Carey as the new Deputy Director	Marvin moved approval of the October 12, 2010 minutes. Ken seconded. Approved.
MCILS Operations Report	<p>Jennifer presented the Operations Report. Vouchers are being paid within 7-10 days of submission. We are remaining within budget and generally clearing what comes in so there is not a back-log. Numbers have stabilized. Without screeners in Portland and York, which will be staffed this month, the revenue account is down.</p> <p>Accounts were reviewed. We have just completed a process with AOC so that bail will be held until any outstanding council fees have been paid. This should soon be done electronically.</p> <p>There were questions about the cases opened to date. This figure is not used for projections but if it goes up it could impact budget. The average amount per voucher is stable.</p> <p>John pointed out that there is a problem with attorneys not entering a case when they have been assigned. There may be a couple of hundred cases that have not yet been entered. He and Steve will be contacting attorneys on an individual basis to encourage them to open their cases in a reasonable time frame. There may also be a problem with people entering expenses from more than one case under one docket number. If these practices prove to be a problem the Commission may need to set a policy.</p> <p>Once the electronic interface with MEJIS is available, after the first of the year, we</p>	

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	<p>will have more data and also information about old cases.</p> <p>John said he was pleased to have Steve Carey on staff.</p>	
<p>Revised, Draft Rule Review – Eligibility Requirements for Specialized Cases</p>	<p>Ron pointed out that the draft rule had been discussed for some time at Commission meetings and that MACDL had provided input and that the Commission needed to now approve the rule so that it could be sent out for public comment.</p> <p>Ron reviewed the statute that requires the Commission to establish minimum qualifications.</p> <p>Ron clarified that by establishing these minimum standards there is no expectation that the lawyers that are now assigned are not qualified to handle their cases.</p> <p>There was discussion about the 2<sup>nd</sup> chair requirements and Ron proposed removing the 2<sup>nd</sup> chair requirements under Section 3. 2. C., 3. C., and 4.C. and that on page 8 we add (A) under Authority 1804, 2.</p> <p>John discussed the process once the rule is passed and said that it would take some time so that he anticipates doing it in stages, starting first with the homicide panels, rather than putting it all together at once.</p> <p>There were questions about how many letters an attorney would need to submit and it was suggested that at a minimum there should be people able to comment on each case type.</p> <p>It is not anticipated that the Commission would check up on the letters submitted by attorneys themselves, but if a letter lacks sufficient detail, the Commission might be prompted to check into the attorney’s background.</p> <p>There was discussion about counties where there might not be enough attorneys rostered and there would be a need to bring in attorneys from outside that county. John said he felt the Commission needed to be cognizant of growing the resource</p>	<p>Ron moved approval of the draft rules as amended. Ken seconded. Discussion.</p>

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	<p>of attorneys across the state and identifying attorneys who might be on a track to ultimately take on homicide cases and supporting them.</p> <p>Marvin pointed out several concerns:</p> <ul style="list-style-type: none"> <li>- We don't want to be in a position of encourage attorneys to do jury trials so that they can get the required experience.</li> <li>- We don't want to require CLEs if trainings don't exist.</li> <li>- The numbers required for juvenile cases may be too high for smaller counties.</li> <li>- In some counties, the use of waivers may need to be so high as to make the rule meaningless.</li> <li>- There was a question about whether or not the waiver could be appealed. John responded that he thought it would be included in the overall rule regarding appeals.</li> <li>- What about Lawyers of the Day who are not on the specialty panels for types of cases that come up at arraignment?</li> </ul> <p>There was discussion about the CLE requirements and the need to make sure people know where they can get the courses and that what we are requiring fits within the overall number of CLEs that they are required to take.</p> <p>It was pointed out that it would be a breach of ethical obligations for any lawyer to put their interests, i.e. need to do a jury trial for experience, above the best interests of their client.</p> <p>Marvin pointed out that he may have a potential conflict since he is a rostered attorney.</p> <p>There was further discussion about the rule.</p> <p>Marvin asked if he could vote.</p>	<p>Ron and Ken withdrew their motions.</p> <p>Kim moved to put forward the rule as written with: the redactions of Section 3. 2.C., 3. C., and 4.C.; the typos corrected: and the addition of (A) under Authority 1804, 2. Commission members were OK</p>

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	<p>The next step is to get the rule out for comment and schedule a public hearing. The rule will be in final form by Monday.</p>	<p>with Marvin voting. Rule approved as amended. The week of December 13<sup>th</sup> works for a possible hearing which will be scheduled later.</p>
Draft Standards Review and Discussion		Discussion postponed until next meeting.
Task Force on Kinship Families Request	<p>John asked for guidance from the Commission on responding to a letter from the Task Force on Kinship Families asking the Commission to convene a stakeholders group to discuss legal representation of informal kinship families.</p>	<p>Since these types of cases fall outside of the realm of Commission cases it was suggested that the group be referred to the Justice Action Group (JAG).</p>
Public Comment	<p>David Mitchell, President of MACDL pointed out that he wanted to make sure that the standards that come out are concise and real and will work everywhere in the state. He raised a concern about new attorneys and whether or not they will be able to make it into and move up in the system and stressed that we need to make sure we have a steady flow and growth of attorneys in the state.</p> <p>Rob Rufner, MIDC and board member of MACDL pointed out that LOD may need to be lawyers who are over qualified for the cases being handled.</p> <p>It was pointed out that the goal of the statute is to provide quality representation. The Commission will be looking at a more structured LOD program in the future.</p>	
Adjournment		<p>Kim moved to adjourn. Marvin seconded. Approved.</p>
Date and Time of Next Meeting		<p>Next meeting December 14, 2010 9:30.</p>

## Propose rule with amendments approved by Commission 11-9-10

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

\_\_\_ MAINE COMMISSION ON INDIGENT LEGAL SERVICES

### Chapter 3: ELIGIBILITY REQUIREMENTS FOR SPECIALIZED CASE TYPES

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Summary: Chapter 2 of the Commissions' Rules **sets** out the minimum eligibility requirements to be rostered to accept appointments from the Commission. The Rules in this Chapter are promulgated to establish the eligibility requirements to be rostered on specialty panels for specific types of cases.

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

1. 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.

2. Serious Violent Felony. "Serious Violent Felony" means an offense under 17-A M.R.S.A. §§ 152-A, 208, 208-B, 208-C, 301, 401(1)(B)(1), (2), or (3), 402-A (1)(A), 651, 802, 803-A, 1105-A, 1105-B, and 1105-C. "Serious Violent Felony" includes crimes involving substantially similar conduct in another jurisdiction. "Serious Violent 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.

3. Sex Offense. "Sex Offense" means an offense under Chapter 11 of the Criminal Code, 17-A M.R.S.A. §§ 251-261, or under Chapter 12 of the Criminal Code, 17-A M.R.S.A. §§ 281-285. "Sex Offense" includes crimes involving substantially similar conduct in another jurisdiction. "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.

4. 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. Homicide, including OUI manslaughter
- B. Sex offenses
- C. Serious violent felonies
- D. Operating under the influence
- E. Domestic violence
- F. Juvenile Defense
- G. Protective Custody Matters
- H. Involuntary Commitment

## **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
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. Homicide. In order to be rostered for homicide cases an attorney must:

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

B. Have tried before a judge or jury as first chair at least five serious violent felony, homicide, or Class C or higher sex offense cases within the last seven years, at least two of which were jury trials;

C. Have tried as second chair at least two homicide cases with an experienced homicide defense attorney, if the applicant has not previously tried as first chair a homicide case in the last ten years;

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;

E. Provide a resume and letter explaining reasons for interest in and qualifications for representing individuals charged with homicide; and

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.

2. Sex Offenses. In order to be rostered for sex offense cases an attorney must:

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

B. Have tried before a judge or jury as first chair at least three serious violent felony, homicide, or Class C or higher sex offense cases in the last seven years, at least two of which were jury trials;

~~C. Have tried as second chair at least one sex offense case with an experienced sex offense lawyer, if the applicant has not previously tried as first chair a sex offense case in the last seven years;~~

~~D. C.~~ Provide a resume and letter explaining reasons for interest in and qualifications for representing individuals charged with a sex offense; and

~~E. D.~~ 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 a sex offense. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.

3. Serious Violent Felonies. In order to be rostered for serious violent felony cases an attorney must:

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

B. Have tried as first chair at least five criminal or civil cases in the last seven years, at least two of which were jury trials and at least two of which were criminal trials;

~~C. Have tried as second chair at least one serious violent felony case, homicide, or a Class C or higher sex offense case with an experienced defense attorney, if the applicant has not previously tried as first chair a serious violent felony case, homicide, or a Class C or higher sex offense case in the last seven years;~~

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

~~E. D.~~ 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 a serious violent felony. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.

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

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

B. Have tried before a judge or jury as first chair at least two cases, either civil or criminal, at least one of which was a jury trial, and conducted at least three contested hearings within at least the last seven years;

~~C. Have tried as second chair at least one OUI case with an experienced OUI defense attorney, if the applicant has not previously tried as first chair an OUI case;~~

~~D. C.~~ Have obtained in the last two years at least four hours of CLE credit on topics relevant particularly to OUI defense;

~~E. D.~~ Provide a resume and letter explaining reasons for interest in and qualifications for representing individuals charged with an OUI; and

~~F. E.~~ 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 ~~and~~ OUI. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.

5. Domestic Violence. In order to be rostered for domestic violence cases an attorney must:

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



B. Have tried before a judge or jury as first chair at least one criminal case and conducted at least two contested hearings within at least the last five years;

C. Have obtained in the last two 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;

D. Provide a resume and letter explaining reasons for interest in and qualifications for representing individuals charged with a domestic violence crime; and

E. 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 a domestic violence crime. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.

6. Juvenile Defense. In order to be rostered for juvenile defense cases an attorney must:

A. For civil offenses and misdemeanor cases:

1) Have at least 6 months criminal or civil law practice experience or have completed a legal internship at a district attorney's office or in a juvenile law clinic.

2) Have attended at least two hours of CLE credit on 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;

B. For felony cases and sex offense cases:

1) Have at least two years of juvenile law practice experience;

2) Have handled at least 15 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 two years at least four hours of CLE credit on 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 resume and letter explaining reasons for interest in and qualifications for representing juveniles in felony and sex offense cases; and

6) 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 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.**

C. For Competency to Stand Trial Hearings and Bindover Hearings:

1) Have at least three 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 two years at least four hours of CLE credit on topics devoted to juvenile defense including training and education regarding

5) Provide a resume and letter explaining reasons for interest in and qualifications for representing juveniles in competency and bindover hearings; and

6) 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 juveniles in competency and bindover hearings. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.

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

A. Have at least one year criminal or civil law experience;

B. Have conducted at least three contested hearings and tried at least one case, either criminal or civil, before a judge or jury within the last five years

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

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

E. 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 parents in protective custody. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.

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 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 in preparation of and with the termination of parental rights hearing.

8. Involuntary Commitment. In order to be rostered for Involuntary Commitment cases an attorney must:

- A. Have at least two years of law practice experience;
- B. Have conducted at least three contested hearings and tried at least one case, either civil or criminal, before a judge or jury within the last five years.
- C. Have attended in the last two years at least four hours of CLE credit on topics devoted to the representation of individuals with mental health issues, including training and education regarding placement options and dispositions, mental health diagnosis and treatment and the collateral consequences of involuntary commitments;
- D. Provide a resume and letter explaining reasons for interest in and qualifications for representing individuals facing involuntary commitment; and
- E. 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 facing involuntary commitment. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.

#### 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.
- 2. 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.

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