

Chapter 3: ELIGIBILITY REQUIREMENTS FOR SPECIALIZED ~~CASE TYPES~~ PANELS

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

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

1. Executive Director. "Executive Director" means the Executive Director of the Maine Commission on Indigent Legal Services or the Executive Director's decision-making designee.

2. Co-counsel. "Co-counsel" means an attorney who works with another attorney on a particular case. Both attorneys must be counsel of record, professionally responsible for the case, and actively participate in the representation of the client.

3. 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.

4. ~~Domestic Violence.~~ Homicide. "Homicide" 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. § 201 (Murder), § 202 (Felony Murder), § 203 (Manslaughter), § 152 (Attempted Murder), and § 152-A (Aggravated Attempted Murder).~~

D. ~~29-A M.R.S.A. § 210-A; 2411(1-A)(D)(1-A) (Criminal OUI Causing Death).~~

E. ~~Violation of a protection order under 17-A M.R.S.A. § 506-B.~~

F. ~~"Domestic Violence" includes crimes involving substantially similar conduct in another jurisdiction.~~

G. ~~"Domestic Violence"~~ Homicide 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.
, or to commit any crime involving substantially similar conduct.

~~3. **Serious Violent**~~Major Felony. ~~“Serious Violent”~~“Major Felony” means:

5. A. _____

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), 208-D (Domestic Violence Aggravated Assault), 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. ~~B.~~ —“~~Serious Violent~~“Major Felony” includes crimes involving substantially similar conduct ~~in another jurisdiction.~~

C. ~~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, or to commit a crime involving substantially similar conduct

4.6. Sex Offense. “Sex Offense” means:-

A. ~~A.~~ —An offense under 17-A M.R.S.A. §§ ~~251-259-A~~253-260 (Sexual Assaults), §§ 281-285 (Sexual Exploitation of Minors), § 556 (Incest), § 511(1)(D) (Violation of Privacy), § 852 (Aggravated Sex Trafficking), § 853 (Sex Trafficking), and § 855 (Patronizing Prostitution of Minor or Person with Mental Disability).-

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

C. ~~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, or to commit a crime involving substantially similar conduct.

7. Operating Under the Influence (OUI). “OUI” means:

A. All offenses under 29-A M.R.S.A. § 2411 (Criminal OUI).

B. “OUI” includes crimes involving substantially similar conduct.

C. OUI 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, or to commit a crime involving substantially similar conduct.

8. Domestic Violence (DV). “Domestic Violence” means:

A. Offenses denominated as Domestic Violence under 17-A M.R.S.A. § 207-A (Domestic Violence Assault), § 208-D (Domestic Violence Aggravated Assault), § 209-A (Domestic Violence Criminal Threatening), § 210-B (Domestic Violence Terrorizing), § 210-C (Domestic Violence Stalking), and § 211-A (Domestic

- Violence Reckless Conduct).
- B. Any offense alleged to have been committed against a family or household member or dating partner as defined by 19-A M.R.S.A. §4002.
- C. Any offense of stalking under 17-A M.R.S.A. § 210-A (Stalking)
- D. Violation of a protective order under 17-A M.R.S.A. § 506-B.
- E. “Domestic Violence” includes crimes involving substantially similar conduct.
- 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, or to commit any crime involving substantially similar conduct.
- 9. Child Protective. “Child Protective” means a district court proceeding in which a parent is entitled to counsel pursuant to 22 M.R.S.A. § 4005(2).
- 10. Child Protective Appeal. “Child Protective Appeal” means an appeal to the Maine Supreme Judicial Court of any order terminating parental rights.
- 11. Homicide Appeal. “Homicide Appeal” means an appeal to the Maine Supreme Judicial Court of a conviction involving a homicide offense, as defined by section 1(4) herein.
- 12. Other Criminal Appeal. “Other Criminal Appeal” means an appeal to the Maine Supreme Judicial Court of any criminal conviction other than a conviction for a homicide offense, as defined by section 1(4) herein.
- 13. Lawyer of the Day (LOD). “LOD” means:
 - A. An attorney who has been designated by the Commission as eligible for case assignments and is designated by a court pursuant to M.R.U. Crim. P. 5(e) for the limited purpose of representing a defendant or defendants at their arraignment or initial appearance.
- 14. Proceeding Type. “Proceeding Type” means the type of proceeding for which an attorney may serve as LOD. The three proceeding types are in-custody, walk-in, and juvenile.
 - A. In-Custody: arraignments or initial appearances for defendants in adult criminal cases who are incarcerated.
 - B. Walk-In: arraignments or initial appearances for defendants in adult criminal cases who are not incarcerated.
 - C. Juvenile: arraignments or initial appearances for juvenile defendants.
- 15. LOD Roster: the list of attorneys designated as eligible by the Commission to serve as LOD in a proceeding type for a particular court.
- 16. Shadow Session: an attorney applying for LOD eligibility “shadows” an eligible LOD for a complete session of the proceeding type for which the attorney is applying. The applicant must be present with the eligible LOD for the entire LOD appearance,

including in client interviews (with client consent), and in the courtroom. Rules of client confidentiality and privilege apply to all communications between the client, the LOD, and the attorney participating in a shadow session. If it is a morning LOD session that continues into the afternoon, the applicant must be present the entire time for what will be counted as one shadow session. If the shadowing attorney is eligible to receive Commission case assignments at the time of the shadow session, the shadowing attorney is eligible for payment in accordance with Commission Rule 301, Section 5.

17. Resource Counsel. “Resource Counsel” means an attorney who provides mentoring and other services to rostered counsel as delineated in Chapter 301 of the Commission rules.

18. Commission Liaison. “Commission Liaison” means the attorney who performs services for clients as part of a specialty court team but who has not otherwise been appointed to represent a specific client on a specific docket.

5.19. Specialized ~~Case-Types~~Panels. “Specialized ~~Case-Types~~Panels” means those ~~eases~~ types of assignments 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 ~~ease-types~~panels:

A. Homicide, including OUI ~~manslaughter~~Manslaughter

B. Sex ~~offenses~~Offenses

~~C. — Serious violent felonies~~

C. Major Felonies

D. Operating ~~under~~Under the ~~influence~~Influence

E. Domestic ~~violence~~Violence

F. Juvenile ~~defense~~Defense

G. Child Protective ~~custody matters~~

~~H. — [Repealed]~~

H. Child Protective Appeals

I. Homicide Appeals

J. Other Criminal Appeals

K. In-Custody Lawyer of the Day

L. Walk-In Lawyer of the Day

M. Juvenile Lawyer of the Day

N. Resource Counsel

O. Commission Liaison

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~~ eligibility for specialized panels to demonstrate the minimum qualifications necessary to be placed on a ~~Specialized Case Type Roster~~ a specialized panel. An applicant for a ~~Specialized Case Type Roster~~ specialized panel must present additional information or documents 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~~ specialized panel. 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~~ their sole discretion, remove an attorney from a ~~Specialized Case Type Roster~~ specialized panel at any time if there is reasonable grounds to believe 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~~ specialized panel at any time.

SECTION 3. Minimum Eligibility Requirements for Specialized ~~Case Types~~ Panels.

1. 1. Homicide. ~~In order to~~ To be rostered for homicide cases an attorney must:

- A. Have at least five years of criminal ~~law~~ defense practice experience;-
- B. Have tried before a ~~judge~~ jury, individually or ~~jury as first chair~~ co-counsel, at least five felony cases within the last ten years, at least two of which were ~~serious violent~~ major felony, homicide, or Class C or higher sex offense cases, ~~AND at least two of which were jury trials~~;
- C. Have tried ~~before a jury, individually or as first chair~~ a homicide case in the last fifteen years, OR have tried as second chair co-counsel, at least one homicide case ~~with an experienced homicide defense attorney within~~ in the ~~past five~~ last fifteen 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 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~~authors.

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

- A. Have at least three years of criminal ~~law~~defense practice experience;
- B. Have tried before a ~~judge~~jury, individually or ~~jury as first chair~~co-counsel, at least three felony cases ~~in~~within the last ten years, ~~at least two of which were jury trials~~;
- C. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with a sex offense; ~~and~~
- 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~~authors; ~~and~~
- E. ~~Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.~~

3. 3.—Serious ViolentMajor Felonies. ~~In order to~~To be rostered for ~~serious violent~~major felony cases an attorney must:

- A. Have at least two years of criminal ~~law~~defense practice experience;
- B. Have tried before a jury, individually or ~~as first chair~~co-counsel, 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~~;
- C. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with a ~~serious violent~~major felony; and
- 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~~major felony. The letters of reference must be submitted directly to the Executive Director, ~~or his or her designee~~, by the ~~author~~authors.
- E. ~~Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.~~

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

- A. Have at least one year of criminal ~~law~~defense practice experience;
- B. Have tried before a ~~judge or jury~~-, individually or as first chair co-counsel, at least two criminal cases, and conducted at least two contested hearings within ~~at least~~ the last ten years;
- C. Have obtained in the last three years at least four hours of CLE credit on topics relevant particularly to OUI defense;-
- D. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with an OUI; 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 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~~authors.

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

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

- A. Have at least one year of criminal ~~law~~defense practice experience;
- B. Have tried before a ~~judge or jury~~-, individually or as first chair co-counsel, at least two criminal cases and conducted at least two contested hearings within ~~at least~~ the last ten years;
- C. Have obtained in the last three years at least four hours of CLE credit on topics related to domestic violence defense, which ~~included~~must include specific training on the collateral consequences of such convictions;-
- D. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with a domestic violence crime; 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 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~~authors.

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

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

A. ~~f~~Repealed~~f~~.

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

- 1) ~~1)~~ Have at least one year of juvenile ~~law~~defense practice experience;
- 2) ~~2)~~ Have handled at least 10 juvenile cases to conclusion;-
- 3) ~~3)~~ Have tried at least 5 contested juvenile hearings (including but not limited to: detention hearings, evidentiary hearings, adjudication hearings, and dispositional hearings); individually or as co-counsel, within the past ten years;
 - ~~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;~~
- 4) ~~5)~~ Have completed the Commission's Juvenile Law Minimum Standards Training;
- 5) Provide a letter explaining reasons for interest in and qualifications for representing juveniles in felony and sex offense cases; and
- 6) ~~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~~authors.
- ~~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. ~~C.~~ — For Bind-over~~Over~~ Hearings:

- 1) ~~1)~~ Have at least two years of juvenile ~~law~~defense practice experience;
- 2) ~~2)~~ Have handled at least 20 juvenile cases to conclusion ~~in~~within the past ten years;

- 3) ~~3)~~ Have tried, individually or as co-counsel, 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) ~~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 and adolescent brain development; adolescent mental health diagnosis and treatment; and issues and case law related to competency, bind-over procedures, and the collateral consequences of juvenile adjudications;
- 5) ~~5)~~ Provide a letter explaining reasons for interest in and qualifications for representing juveniles in bind-over hearings; and
- 6) ~~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~~ authors.

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

D. 7.—For Bound Over Cases:

- 1) If a case is bound over, the assigned attorney must be eligible for the adult criminal case types implicated by the charges, or have eligible co-counsel appointed in the matter

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

A. A.—~~/Repealed/.~~

B. B.—Satisfy one of the following litigation requirements:

- 1) Have ~~conducted~~ provided representation to parents in at least four contested hearings in civil or criminal three unrelated child protective cases from the preliminary protective order stage through disposition of the cases within the last five ~~past ten~~ years; or

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;

- 2) ~~D.~~ Serve as co-counsel with an attorney who is eligible to receive Commission child protective case assignments on two or more assigned child protective cases for at least twelve months prior to the date of the application.

C. Complete the Commission's Child Protective Minimum Standards Training;

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

E. 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 child protective ~~custody~~ cases. The letters of reference must be submitted directly to the Executive Director, ~~or his or her designee~~, by the ~~author~~authors.

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

~~F. 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~~fewer than ~~6~~six months of child protection experience, then the attorney of record must file a request with the ~~MCILS~~Commission for a more experienced attorney to serve as ~~a second chair~~co-counsel to assist ~~the attorney of record~~them with the termination of parental rights hearing.

~~8. 8. /Repealed/.~~

~~9.~~

~~9. Law~~**Maine Supreme Judicial Court Appeals.** ~~In order to be rostered for To accept assignments to Law~~Maine Supreme Judicial Court appeals, ~~an attorney must be eligible for the applicable appeal type as outlined below.~~

A. Child Protective Appeals. ~~To be eligible to accept assignments to child protective appeals, an attorney must satisfy the below requirements. Even if an attorney is eligible for child protective appeals, the attorney is not eligible to represent a client in cases where a child protective appeal when the attorney was trial counsel is not continuing on appeal, an attorney must for that case. If a client wishes to appeal a child protective case, the attorney shall file a motion to withdraw as counsel simultaneously with the notice of appeal.~~

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

~~1) 1) In criminal and juvenile cases, the entry of sentence or disposition in five or more child protective appeals in the Maine Supreme Judicial Court, either after plea or trial or the entry into a deferred disposition; individually or as co-counsel;~~

~~2) In child protective cases, the issuance of a jeopardy order or an order terminating parental rights;~~

~~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.~~

~~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.~~

~~D.1) 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~~

- 2) Provide copies of all briefs the attorney filed, and the opinions/decisions rendered in the five most recent appeals the attorney has handled;
- 3) Have been deemed eligible to accept PC case assignments pursuant to Section 3(7) of this Chapter;
- 4) Demonstrate, through application and submitted briefs, exceptional legal research, writing, and analytical skills;
- 5) 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
- ~~E.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 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.~~ authors.

B. Homicide Appeals If trial counsel wants to continue representation on a homicide appeal, the attorney must either be eligible for homicide appeals by the time the notice of appeal is filed, or file a motion for co-counsel or motion to withdraw simultaneously with the notice of appeal. To be eligible to accept assignments to homicide appeals, an attorney must:

- 1) Have provided representation in seven or more criminal appeals in the Maine Supreme Judicial Court, either individually or as co-counsel, within the last ten years;
- 2) Have completed oral argument in at least two criminal appeals before the Maine Supreme Judicial Court;
- 3) Provide copies of all briefs the attorney filed, and the opinions/decisions rendered in the seven most recent criminal appeals the attorney has handled;
- 4) Demonstrate, through application and submitted briefs, exceptional legal research, writing, and analytical skills;
- 5) 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
- 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 provide representation in appeal cases. The letters of reference must be submitted directly to the Executive Director by the authors.

C. Other Criminal Appeals. If trial counsel wants to continue representation on an other criminal appeal, the attorney must either be eligible for other criminal appeals by the time the notice of appeal is filed, or file a motion for co-counsel or motion to withdraw simultaneously with the notice of appeal. To be eligible to accept assignments to other criminal appeals, an attorney must:

- 1) Have provided representation in five or more criminal appeals in the Maine Supreme Judicial Court, either individually or as co-counsel, within the last ten years;
- 2) Have completed oral argument in at least one criminal appeal before the Maine Supreme Judicial Court;
- 3) Provide copies of all briefs the attorney filed, and the opinions/decisions rendered in the five most recent criminal appeals the attorney has handled; and
- 4) Demonstrate, through application and submitted briefs, exceptional legal research, writing, and analytical skills.
- 5) 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

~~F.6) Letters~~ If the applicant seeks a waiver, the applicant shall submit three letters of reference ~~shall 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 upon the request of directly to the Executive Director, or his or her designee.~~ by the authors.

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

10. 10. — Post-Conviction Review. ~~In order to~~ To be rostered for post-conviction review cases an attorney must:

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

~~E. Letters of reference and writing~~ Writing samples shall also be submitted upon the request of the Executive Director.;

11. Lawyer of the Day (LOD).

A. LOD Specialized Panels:

- 1) **In-Custody.** To be rostered for LOD for in-custody proceedings, an attorney must:

- a. Complete the Commission's LOD Minimum Standards Training;
- b. Be currently eligible to accept Commission criminal case assignments;
- c. Have previously been deemed eligible for OUI and domestic violence cases in accordance with Chapter 3 of the Commission Rules;
- d. Complete three full in-custody LOD shadow sessions on three separate days. The eligible LOD(s) who were shadowed must verify in writing to the Commission that the applicant completed each shadow session; and
- e. Certify that they have read, understand, and agree to comply with all Commission standards of practice.

2) **Walk-In.** To be rostered for LOD for walk-in proceedings, an attorney must:

- a. Complete the Commission's LOD Minimum Standards Training;
- b. Be currently eligible to accept Commission criminal case assignments;
- c. Have previously been deemed eligible for OUI and domestic violence cases in accordance with Chapter 3 of the Commission Rules;
- d. Complete three full walk-in LOD shadow sessions on three separate days. The eligible LOD(s) who were shadowed must verify in writing to the Commission that the applicant completed each shadow session; and
- e. Certify that they have read, understand, and agree to comply with all Commission standards of practice.

3) **Juvenile.** To be rostered for juvenile LOD proceedings, an attorney must:

- a. Complete the LOD Minimum Standards Training prior to or ~~his~~ within three months of being rostered for LOD assignments;
- b. Be currently eligible to accept Commission juvenile case assignments;
- c. Have previously been deemed eligible for juvenile felony cases in accordance with Chapter 3 of the Commission Rules;
- d. Complete three full juvenile walk-in LOD shadow sessions on three separate days. The eligible LOD(s) who were shadowed must verify in writing that the applicant completed each shadow session;
- e. Complete three full juvenile in-custody LOD shadow sessions on three separate days. The eligible LOD(s) who were shadowed must verify in writing that the applicant completed each shadow session; and
- f. Certify that they have read, understand, and agree to comply with all Commission LOD standards of practice.

12. Commission Liaison.

A. To be eligible to serve as a Commission Liaison, an attorney must:

- 1) Be eligible to accept Commission case assignments;
- 2) Have at least five years of experience practicing criminal defense;
- 3) Demonstrate a history of providing high quality legal services; and
- 4) Have experience practicing law in the court(s) in which counsel is seeking to serve as the Commission Liaison.

13. Resource Counsel.

A. To be eligible to serve as Resource Counsel, an attorney must:

- 1) Submit three letters of reference from attorneys with whom the attorney

applicant does not practice that address the attorney's ability to work with and advise other attorneys of varying experience levels;

- 2) Have at least five years' experience actively practicing in the area of law for which counsel is seeking eligibility as Resource Counsel;
- 3) Be currently eligible to accept Commission case assignments;
- 4) Demonstrate a history of providing high quality legal services;
- 5) Demonstrate exceptional litigation skills and experience;
- 6) Demonstrate high ethical standards; and
- E-7) Have no substantiated Commission assessments or her designee investigations or substantiated Board of Bar Overseers complaints within the three years immediately preceding counsel's Resource Counsel application.

B. Counsel must reapply to serve as Resource Counsel on an annual basis. That application is due at the same time as the Commission annual renewal.

C. Counsel serves as Resource Counsel at the discretion of the Executive Director. The Executive Director may terminate someone's eligibility to serve as Resource Counsel at any time, with or without cause.

SECTION 4. Waiver of Certain Eligibility Requirements

1. An attorney who wishes to receive assignments for one or more of the specialized ~~case types~~panels listed above but who does not meet both requirements of: ~~(4a)~~ years of practice experience; ~~and (2or (b))~~ trial or litigation experience, may seek a waiver of either, but not both, requirements.

~~1-2.~~ 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 high-quality representation to the indigent people whose charges or litigation matters are covered by this rule.-

~~2-3.~~ An attorney may apply for a conditional waiver if additional time is needed to meet CLE requirements.-

~~3-4.~~ The Executive Director, ~~or his or her designee,~~ may consider other litigation experience, and total years of practice, ~~and regional conditions and needs~~ in granting or denying a waiver to any ~~particular~~ attorney.-

STATUTORY SECTION 5. Overlapping Offenses.

1. If a case involves multiple offenses that are categorized within specialty panels, counsel must be eligible for all specialty panels that are implicated to accept the case.
2. If an offense is categorized as multiple different specialty panels, the attorney must be eligible for all specialty panels implicated by the offenses to accept assignment the case.

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

EFFECTIVE DATE:

— July 8, 2011 — ~~filing 2011-181 (Final adoption, major substantive)~~

AMENDED:

— June 10, 2016 — filing 2016-091 — ~~(Final adoption, major substantive)~~