

Chapter 3: ELIGIBILITY REQUIREMENTS FOR SPECIALIZED PANELS

Summary: Chapter 2 of the Commission’s rules sets out the minimum requirements to be Eligible to accept assignments from the Commission. The rules in this Chapter are promulgated to establish the eligibility requirements for Specialized Panels.

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 Public Defense 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. Homicide. “Homicide” means:
 - A. All offenses contained in 17-A M.R.S.A. §§ 201 (Murder), 202 (Felony Murder), 203 (Manslaughter), 152 (Attempted Murder), and 152-A (Aggravated Attempted Murder).
 - B. 29-A M.R.S.A. § 2411(1-A)(D)(1-A) (Criminal OUI Causing Death).
 - C. 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.
5. Major Felony. “Major Felony” means:
 - A. An offense under 17-A M.R.S.A. §§ 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. “Major Felony” includes crimes involving substantially similar conduct.
 - C. “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 in Subsection 1(5) of this Chapter or

to commit any crime involving substantially similar conduct.

6. Sex Offense. “Sex Offense” means:

A. An offense under 17-A M.R.S.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. “Sex Offense” includes crimes involving substantially similar conduct.

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 in Subsection 1(6) of this Chapter or to commit any 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 in Subsection 1(7) of this Chapter 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 in Subsection 1(8) of this Chapter, or to commit any crime involving substantially similar conduct.

9. Juvenile Defense. “Juvenile Defense” means any juvenile crime defined by 15 M.R.S.A. § 3103.

10. Child Protective. “Child Protective” means a Maine District Court proceeding in which a parent is entitled to counsel pursuant to 22 M.R.S.A. § 4005(2).
11. Child Protective Appeal. “Child Protective Appeal” means an appeal to the Maine Supreme Judicial Court of any order terminating parental rights.
12. 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) of this Chapter.
13. 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.
14. Lawyer of the Day (LOD). “LOD” means 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.
15. 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.
16. LOD Roster. “LOD Roster” means the list of attorneys designated as Eligible by the Commission to serve as LOD in a Proceeding Type for a particular court.
17. Shadow Session. “Shadow Session” means a session in which an attorney who has applied for LOD eligibility “shadows” an attorney who has been designated as Eligible for 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 Chapter 301, Section 5 of the Commission rules.
18. Resource Counsel. “Resource Counsel” means an attorney who provides mentoring and other services to Eligible counsel as delineated in Chapter 301 of the Commission rules.
19. PDS Liaison. “PDS 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.

20. Specialized Panels. “Specialized Panels” means those types of assignments that are complex in nature. They include the following panels:

- A. Homicide
- B. Sex Offenses
- C. Major Felonies
- D. Operating Under the Influence
- E. Domestic Violence
- F. Juvenile Defense
- G. Child Protective
- H. Child Protective Appeals
- I. Homicide Appeals
- J. Other Criminal Appeals
- K. Post-Conviction Review
- L. In-Custody Lawyer of the Day
- M. Walk-In Lawyer of the Day
- N. Juvenile Lawyer of the Day
- O. Resource Counsel
- P. PDS Liaison

SECTION 2. Powers and Duties of the Executive Director.

1. The Executive Director shall develop an application process for an attorney seeking eligibility for a Specialized Panel to demonstrate the minimum qualifications necessary to be placed on a Specialized Panel. An applicant for a Specialized Panel must present additional information or documents beyond the minimum requirements of this Chapter if requested by the Executive Director.

2. The Executive Director shall have the sole discretion to make the determination if an attorney is qualified to be placed on a Specialized Panel. In addition, the Executive Director shall have the sole discretion to grant or deny a waiver pursuant to, and in accordance with, Section 4.

3. The Executive Director may, in their sole discretion, suspend or remove an attorney from a Specialized Panel at any time if there is reasonable grounds to believe the attorney is not meeting the minimum eligibility requirements.

SECTION 3. Minimum Eligibility Requirements for Specialized Panels.

1. Homicide. To be Eligible for Homicide cases, an attorney must:

A. Practice Experience: Have at least five years of criminal defense practice experience;

B. Trial/Litigation Experience:

1) Have tried before a jury, individually or as co-counsel, at least five felony cases within the last ten years, at least two of which were Major Felony, Homicide, or Class C or higher Sex Offense cases;

2) Have tried before a jury, individually or as co-counsel, at least one Homicide case in the last fifteen years;

C. 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;

D. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with Homicide;

E. Have submitted to the Commission three letters of reference from attorneys, at least one of whom does not work within the same firm as applicant, 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 by the authors;

F. If the applicant seeks a waiver of any of these eligibility requirements, the applicant shall submit three letters of reference from attorneys, at least one of whom does not work within the same firm as applicant, asserting that the applicant is qualified to represent individuals charged with a Homicide offense. The letters of reference must be submitted directly to the Executive Director by the authors. Applicants may alternatively submit the names and contact information for five attorneys willing to provide references if contacted by PDS staff directly. At least two of these references must be attorneys who do not work within the same firm as the applicant. The references in this section may be the same as those provided in part E of this rule; and

G. Certify that they have read, understand, and agree to comply with all Commission standards of practice.

2. Sex Offenses. To be Eligible for Sex Offense cases, an attorney must:

A. Practice Experience: Have at least three years of criminal defense practice experience;

B. Trial/Litigation Experience: Have tried before a jury, individually or as co-counsel, at least three felony cases within the last ten years;

C. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with a Sex Offense; and

D. Certify that they have read, understand, and agree to comply with all Commission standards of practice.

E. If the applicant seeks a waiver of any of these eligibility requirements, the applicant shall submit three letters of reference from attorneys, at least one of whom does not work within the same firm as applicant, 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 by the authors. Applicants may alternatively submit the names and contact information for 5 attorneys willing to provide references if contacted by PDS staff directly. At least two of these references must be attorneys who do not work within the same firm as the applicant.

3. Major Felonies. To be Eligible for Major Felony cases, an attorney must:

- A. Practice Experience: Have at least two years of criminal defense practice experience;
 - B. Trial/Litigation Experience: Have tried before a jury, individually or as co-counsel, at least four criminal cases in the last ten years;
 - C. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with a Major Felony; and
 - D. Certify that they have read, understand, and agree to comply with all Commission standards of practice.
 - E. If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys, at least one of whom does not work within the same firm as applicant, asserting that the applicant is qualified to represent individuals charged with a Major Felony. The letters of reference must be submitted directly to the Executive Director by the authors. Applicants may alternatively submit the names and contact information for 5 attorneys willing to provide references if contacted by PDS staff directly. At least two of these references must be attorneys who do not work within the same firm as the applicant.
4. Operating Under the Influence. To be Eligible for OUI cases, an attorney must:
- A. Practice Experience: Have at least one year of criminal defense practice experience;
 - B. Trial/Litigation Experience: Have tried before a jury, individually or as co-counsel, at least two criminal cases, and conducted at least two contested hearings within 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. Certify that they have read, understand, and agree to comply with all Commission standards of practice.
 - F. If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys, at least one of whom does not work within the same firm as applicant, 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 by the authors. Applicants may alternatively submit the names and contact information for five attorneys willing to provide references if contacted by PDS staff directly. At least two of these references must be attorneys who do not work within the same firm as the applicant.
5. Domestic Violence. To be Eligible for Domestic Violence cases, an attorney must:
- A. Practice Experience: Have at least one year of criminal defense experience;
 - B. Trial/Litigation Experience: Have tried before jury, individually or as co-counsel, at least two criminal cases and conducted at least two contested hearings within 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 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. Certify that they have read, understand, and agree to comply with all Commission standards of practice.

F. If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys, at least one of whom does not work within the same firm as applicant, 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 by the authors. Applicants may alternatively submit the names and contact information for five attorneys willing to provide references if contacted by PDS staff directly. At least two of these references must be attorneys who do not work within the same firm as the applicant.

6. Juvenile Defense. To be Eligible for Juvenile Defense cases, an attorney must:

A. Repealed.

B. For misdemeanor cases:

1) Have completed the Commission's Juvenile Law Minimum Standards Training; and

2) Certify that they have read, understand, and agree to comply with all Commission standards of practice.

C. For Felony cases and Sex Offense cases, an attorney must:

1) Practice Experience: Have at least one year of juvenile defense practice experience;

2) Trial/Litigation Experience:

i. Have handled at least 10 juvenile cases to conclusion; and

ii. Have tried at least five 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;

3) Have completed the Commission's Juvenile Law Minimum Standards Training;

4) Provide a letter explaining reasons for interest in and qualifications for

representing juveniles in felony and Sex Offense cases; and

5) Certify that they have read, understand, and agree to comply with all Commission standards of practice.

6) If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys, at least one of whom does not work within the same firm as applicant, 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 by the authors. Applicants may alternatively submit the names and contact information for five attorneys willing to provide references if contacted by PDS staff directly. At least two of these references must be attorneys who do not work within the same firm as the applicant.

D. For Bind Over Hearings:

1) Practice Experience: Have at least two years of juvenile defense practice experience;

2) Trial/Litigation Experience:

i. Have handled at least 20 juvenile cases to conclusion within the past ten years; and

ii. 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;

3) Have attended in the last three years at least eight hours of CLE credit that cover all the following topics devoted to juvenile defense: 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;

4) Provide a letter explaining reasons for interest in and qualifications for representing juveniles in bind over hearings; and

5) Certify that they have read, understand, and agree to comply with all Commission standards of practice.

6) If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys, at least one of whom does not work within the same firm as applicant, 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 by the authors. Applicants may alternatively submit the names and contact information for five attorneys willing to provide references if contacted by PDS staff directly. At least two of these references must be attorneys who do not work within the same firm as the applicant.

- E. For Bound Over Cases: 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. To be Eligible to represent parents in Child Protective cases, an attorney must:
- A. Repealed.
 - B. Satisfy one of the following Trial/Litigation Experience requirements:
 - 1) Have provided representation to parents in at least three unrelated Child Protective cases from the preliminary protective order stage through disposition of the cases within the past ten years; or
 - 2) 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 proceedings; and
 - E. Certify that they have read, understand, and agree to comply with all Commission standards of practice.
 - F. If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys, at least one of whom does not work within the same firm as applicant, asserting that the applicant is qualified to represent parents in Child Protective cases. The letters of reference must be submitted directly to the Executive Director by the authors. Applicants may alternatively submit the names and contact information for five attorneys willing to provide references if contacted by PDS staff directly. At least two of these references must be attorneys who do not work within the same firm as the applicant.
 - G. If a Petition to Terminate Parental Rights is filed and the attorney of record has not previously tried a termination of parental rights hearing, then the attorney of record must file a request with the Commission for a more experienced attorney to serve as co-counsel to assist them with the termination of parental rights hearing.
8. Repealed.
9. Maine Supreme Judicial Court Appeals. To accept assignments to 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.
 - 1) Practice Experience: Have provided representation in five or more Child Protective Appeals in the Maine Supreme Judicial Court, either individually or as co-counsel;

- 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 Child Protective 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
- 6) Certify that they have read, understand, and agree to comply with all Commission standards of practice.
- 7) If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys, at least one of whom does not work within the same firm as applicant, 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. Applicants may alternatively submit the names and contact information for five attorneys willing to provide references if contacted by PDS staff directly. At least two of these references must be attorneys who do not work within the same firm as the applicant.
- 8) An attorney is not Eligible to represent a client in a Child Protective Appeal when the attorney was trial counsel for that case. If a client wishes to appeal a Child Protective case, the trial attorney shall file a motion to withdraw as counsel simultaneously with the notice of appeal.

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) Practice Experience: 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) Trial/Litigation Experience: 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) Certify that they have read, understand, and agree to comply with all Commission standards of practice.

7) If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys, at least one of whom does not work within the same firm as applicant, 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. Applicants may alternatively submit the names and contact information for five attorneys willing to provide references if contacted by PDS staff directly. At least two of these references must be attorneys who do not work within the same firm as the applicant.

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) Practice Experience: 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) Trial/Litigation Experience: 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;

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) Certify that they have read, understand, and agree to comply with all Commission standards of practice.

7) If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys, at least one of whom does not work within the same firm as applicant, 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. Applicants may alternatively submit the names and contact information for five attorneys willing to provide references if contacted by PDS staff directly. At least two of these references must be attorneys who do not work

within the same firm as the applicant.

10. Post-Conviction Review. To be Eligible for post-conviction review cases, an attorney must:
 - A. Practice Experience: Have at least three years of criminal defense experience;
 - B. Trial/Litigation Experience: 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;
 - D. If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys, at least one of whom does not work within the same firm as applicant, 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 by the author. Applicants may alternatively submit the names and contact information for five attorneys willing to provide references if contacted by PDS staff directly. At least two of these references must be attorneys who do not work within the same firm as the applicant.; and
 - E. Certify that they have read, understand, and agree to comply with all Commission standards of practice.
 - F. 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 Eligible for LOD for in-custody proceedings, an attorney must:
 - i. Complete the Commission's LOD Minimum Standards Training;
 - ii. Be currently Eligible to accept Commission criminal case assignments;
 - iii. Have previously been deemed Eligible for OUI and Domestic Violence cases in accordance with Chapter 3 of the Commission Rules;
 - iv. 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
 - v. Certify that they have read, understand, and agree to comply with all Commission standards of practice.

- 2) Walk-In. To be Eligible for LOD for walk-in proceedings, an attorney must:
 - i. Complete the Commission's LOD Minimum Standards Training;
 - ii. Be currently Eligible to accept Commission criminal case assignments;
 - iii. Have previously been deemed Eligible for OUI and Domestic Violence cases in accordance with this Chapter;
 - iv. 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
 - v. Certify that they have read, understand, and agree to comply with all Commission standards of practice.

- 3) Juvenile. To be Eligible for juvenile LOD proceedings, an attorney must:
 - i. Complete the LOD Minimum Standards Training prior to or within three months of being Eligible for LOD assignments;
 - ii. Be currently Eligible to accept Commission juvenile case assignments;
 - iii. Have previously been deemed Eligible for juvenile felony cases in accordance with this Chapter;
 - iv. 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;
 - v. 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
 - vi. Certify that they have read, understand, and agree to comply with all Commission LOD standards of practice.

12. PDS Liaison.

- A. To be Eligible to serve as a PDS 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;
 - 4) Have experience practicing law in the court(s) in which counsel is seeking to serve as the PDS Liaison; and

- 5) Certify that they have read, understand, and agree to comply with all Commission standards of practice.

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;
- 7) Have not had a Commission investigation or Board of Bar Overseers complaint which resulted in a finding that the attorney violated any Commission rule or Rule of Professional Responsibility within the three years immediately preceding counsel's Resource Counsel Application; and
- 8) Certify that they have read, understand, and agree to comply with all Commission standards of practice.

B. Counsel must reapply to serve as Resource Counsel on an annual basis. That application is due at the same time as the Commission's 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 Panels listed above but who does not meet requirements for both (a) Practice Experience and (b) Trial/Litigation Experience may seek a waiver of either, but not both, requirements.

2. An attorney seeking a waiver must provide the Executive Director 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.

3. The Executive Director may consider other litigation experience, total years of practice, or

any other information deemed relevant in granting or denying a waiver to any attorney.

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 assignment to 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 to the case.

SECTION 6. Applicability.

Based on the passage of 4 MRSA § 1807, counsel will be eligible for specialized panels under the least restrictive criteria as between this Rule and 4 MRSA § 1807. This section of Chapter 3 expires on January 31, 2026.

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
- March 25, 2024 – filing 2024-077
- July 31, 2024 – filing 2024-174 (Emergency)
- April 20, 2025 – filing 2025-085

APAO WORD VERSION CONVERSION (IF NEEDED) AND ACCESSIBILITY CHECK: July 17, 2025. Additional filing history information added to the rule history section as well.

APAO ACCESSIBILITY CHECK: September 30, 2025 (no issues detected)

AMENDED:

- October 5, 2025 – filing 2025-189