
94-649 MAINE COMMISSION ON PUBLIC DEFENSE SERVICES**Chapter 4: CASELOAD STANDARDS FOR ASSIGNED COUNSEL AND CONTRACT COUNSEL**

Summary: The purpose of this rule is to implement 4 M.R.S. § 1804(2)(C) by prescribing “[s]tandards for assigned counsel and contract counsel caseloads” for attorneys accepting assignments to represent consumers of public defense services. The objective is to ensure that attorneys are not overscheduled or overworked and are able to provide effective, high-quality, representation to each client.

SECTION 1. DEFINITIONS

- A. **Points.** “Points” means the weight assigned to each case type.
- B. **Case Type.** “Case type” means the type of matter to which the attorney is assigned.
- C. **Maximum Case Type.** “Maximum case type” means the maximum number of cases of a particular case type that an attorney could carry at one time, if the attorney only accepted cases of that one type.
- D. **Average Hours Per Case.** “Hours Per Case” means the anticipated average number of hours that would be spent on a case of a particular type.
- E. **Maximum Active Caseload Limit.** “Maximum Active Caseload Limit” means the maximum total points across all case types that an attorney may carry on their caseload at any given time and remain eligible to receive assignments, based on the percentage of an attorney’s work hours which are dedicated to assigned cases.
- F. **Maximum Annual Hours Limit.** “Maximum Annual Hours Limit” means the presumptive maximum number of hours that the Commission holds an attorney should work for consumers of public defense services over a rolling 12-month period, as modified by the percentage of an attorney’s work hours which are dedicated to assigned cases.
 - i. The maximum annual hours limit is only used for purposes of applying the caseload limits. If an attorney’s vouchers exceed the maximum annual hours, the attorney will still be paid in accordance with Commission rules.
- G. **Homicide.** “Homicide” has the same meaning as defined by Chapter 3 of the Commission rules.

- H. **Executive Director.** "Executive Director" means the Executive Director of PDS or the Executive Director's decision-making designee.
- I. **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.

SECTION 2. CASE TYPE CALCULATION

- A. Criminal & Juvenile Cases:
 - i. In each docket, the charge assigned the highest points—at the time of appointment—determines the case type.
 - ii. Other offenses contained within a single charging instrument are not assigned a point value.
 - iii. If an attorney represents a client on multiple dockets, each docket is considered a separate case. Each separate case is assigned cumulative points.
 - iv. The point value assigned is applicable to each case from assignment through disposition of the matter. Post-conviction reviews and probation violations are considered new case types, regardless of whether the attorney represented the client in the original case.
- B. Child Protective Cases:
 - i. The point value assigned is applicable to the entire case, from assignment through final resolution of the matter at the district court level. Points are not assigned to each distinct phase (*e.g.*, jeopardy, termination of parental rights).
 - ii. If a client has multiple pending child protective docket numbers because the client has multiple children, only one docket number is assigned a point value at any one time.
- C. Appeals to the Supreme Judicial Court of Maine:
 - i. Appeals to the Supreme Judicial Court of Maine are considered new case types, regardless of whether the attorney represented the client in the trial court.
- D. Lawyer of the Day:
 - i. The point value associated with lawyer for the day duties is assigned per appearance.
 - 1. If counsel serves as lawyer of the day for a morning session that continues into the afternoon, that will be one appearance. If counsel serves as lawyer of the day for a morning session and then a subsequent afternoon session with a second appearance time and list, that will be two appearances.

2. Lawyer of the Day points are calculated on a rolling 12-month basis. This means that all of an attorney's LOD appearances from the preceding 12 months will be included in the attorney's point calculation.

E. PDS Liaison:

- A. PDS Liaison assignments are assigned points based on the hours the particular PDS Liaison spent performing PDS Liaison services in the preceding 12 months. The total hours performed as PDS Liaison are then converted to points based on 7.4 hours being worth 1 point.

SECTION 3. POINTS

- B. The Commission has established the following point values for each respective case type:

Case Type:	Points:	Maximum Case Type:	Average Hours Per Case:
Homicide	33.75	8	248
Class A Crime other than Homicide	4	67	29.6
Class B & C Person Crime	3	90	22.2
Class B & C Property Crime	2	135	14.8
Class D & E Crime	1	270	7.4
Probation Violation	1.25	216	9.25
Post-Conviction Review	6	45	44.4
Appeal	10	27	74
Juvenile	2	135	14.8
Lawyer of the Day (per appearance)	0.5	540	3.7
Protective Custody	5	54	37
Involuntary Commitment	1.25	216	9.25
Inv. Commit. Appeal to Superior Court	2	135	14.8
Emancipation	0.75	357	5.6
Probate	3	90	22.2
Pet. for Mod. of Release or Treatment	3	90	22.2
Petition for Release	3	90	22.2

SECTION 4. LIMITS

- A. The Commission has established a maximum active caseload limit of 270 points, based on a presumptive maximum annual hours limit of 2,000. An attorney whose caseload exceeds

their Maximum Active Caseload Limit at any one time is ineligible to receive additional assignments to represent consumers of public defense services, other than additional case assignments for existing clients, unless granted a waiver pursuant to Section 7 below.

- B. The applicable maximum caseload and hours limits are reduced proportionately, based upon the percentage of the attorney's work hours that are dedicated to Commission cases. The following chart reflects this calculation, based on an active caseload limit of 270 points and an annual limit of 2,000 billed hours:

% of Attorney's Work Hours Spent on Commission Cases:	Maximum Active Caseload Limit:	Maximum Annual Hours Limit:
100%	270	2,000
75%	202	1500
50%	135	1000
25%	67	500
10%	27	200

C. Case Closed:

- i. When a case is closed in the Commission's case management system, the points assigned to that case are deducted from the attorney's active caseload points total.

D. Deferred Disposition:

- i. When the disposition of a case in the Commission's case management system is changed to reflect a deferment, the points assigned to that case are deducted from the attorney's active caseload points total.

E. Other events that toll cases:

- i. When a case enters a status that effectively tolls its progress, the points assigned to that case may be deducted from the attorney's active caseload points total at the discretion of the Executive Director. Events that effectively toll the progress of a case may include a filing; long-term continuance; client in absent or fugitive status; for the time after oral argument, pending a decision in a case before the Maine Supreme Judicial Court; or similar events.

SECTION 5. APPLICATION

A. Applicable Caseload Limit:

- i. All attorneys accepting assignments to represent consumers of public defense services are required to annually certify to the Commission approximately what portion of their annual working hours are dedicated to assigned cases.

- ii. All attorneys who are eligible to accept case assignments on the effective date of this rule must submit their first certification not later than 30 calendar days after the effective date of this rule and by July 15th of that year and every year thereafter, as outlined below.
- iii. Attorneys who apply to accept Commission cases will be required to submit this certification prior to receiving case assignments.
- iv. Attorneys who renew their eligibility to accept Commission cases must, at the time of the submission of their renewal application, submit a new certification of approximately what portion of their annual working hours are dedicated to assigned cases. This certification must be submitted to the Commission no later than July 15th of each year.
- v. After a certification is submitted, the attorney's Maximum Active Caseload Limit will be set in the Commission's information management system.
- vi. If an attorney's workload percentage changes significantly prior to the annual certification, the attorney can adjust their Maximum Active Caseload Limit.
Eligible attorneys who are under the Maximum Active Caseload Limit will always have the ability to opt out of case types and courts to reduce the number of new assignments they receive.
- vii. This certification must be completed on the form provided by the Commission.
- viii. Failure to complete the certification as required will result in suspension from all rosters until the certification has been completed to the satisfaction of the Executive Director.
- ix. Suspected falsification of a certification will result in the initiation of a Commission investigation.
- x. An attorney may set their workload percentage to lower than the actual number but may not set it higher than the actual number. For example, if 75% of an attorney's workload is dedicated to assigned cases, they may set their percentage to a number lower than 75% but may not set it to a number higher than 75%.

B. Case Entry & Closing:

- i. Counsel are responsible for ensuring that all cases are opened in the Commission's case management system within 7 calendar days of receiving notice of assignment in any form, and that cases are closed in the Commission's case management system within 7 days of the completion of work on the file.

SECTION 6. EXCEPTIONS

- A. If an attorney has reached the maximum active caseload and/or annual hours limit, the attorney may exceed those limits to accept new assigned cases for a client the attorney then presently represents. The points and hours associated with the new cases will be calculated and added to the attorney's total in accordance with this rule.

SECTION 7. WAIVER

- A. An attorney may apply for a temporary waiver of the maximum active caseload limit.
- B. A temporary waiver may be granted for a period of up to 6 months.
- C. Application must be made to the Executive Director in the manner designated by the Executive Director.
- D. Waivers are discretionary and will only be granted for good cause.
- E. In determining whether to grant a waiver, the Executive Director may consider some or all the following factors:
 - i. The attorney's representation about their current capacity to accept additional cases;
 - ii. The reason the waiver is being requested;
 - iii. The attorney's experience level;
 - iv. Whether the attorney has support staff;
 - v. Whether the attorney represents a client in multiple, related dockets which require less time to resolve;
 - vi. To the extent that data is available to the Commission, whether the attorney practices primarily in courts experiencing longer average times to resolution of cases; and/or
 - vii. Any other factors relevant to whether, in the discretion of the Executive Director, the waiver should be granted.

SECTION 8. EFFECTIVE DATE

- A. This Chapter becomes effective on January 1, 2024.
-

STATUTORY AUTHORITY:

4 M.R.S. §§ 1804(2)(C), (2)(G) and (4)(D)

EFFECTIVE DATE:

January 1, 2024 – filing 2023-135

September 1, 2024 – filing 2024-205