

**Chapter 2: STANDARDS FOR QUALIFICATIONS OF CONTRACT AND ASSIGNED COUNSEL**

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**Summary:** This Chapter establishes the standards prescribing minimum experience, training, and other qualifications for contract counsel and assigned counsel to be Eligible to receive assignments to represent indigent people who are entitled to a statutorily and/or constitutionally required attorney.

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**SECTION 1. Definitions**

1. Executive Director. "Executive Director" means the Executive Director of the Commission or the Executive Director's decision-making designee.
2. Assignment. "Assignment" means a case or lawyer of the day assignment made by a court or the Commission, and specialty court liaison or resource counsel assignments made by the Commission.
3. Eligible. "Eligible" is the status assigned to an attorney who has satisfied all the requirements of this Chapter, has satisfied all requirements of Chapter 3 for any applicable Specialized Panels, has applied and been approved by the Commission to receive assignments of the applicable case type, is current on their annual renewal, and is not under suspension by the Commission.
4. Roster. "Roster" is a list of attorneys who are both Eligible and actively accepting cases of a particular type in a particular court or location.
5. Specialized Panels. "Specialized Panels" means those types of assignments that are complex in nature. They include the panels listed in Chapter 3 of the Commission Rules.

**SECTION 2. Applicability**

1. Whenever the eligibility standards are amended, the Executive Director shall create an application for all then-currently Eligible counsel to complete to demonstrate they meet all eligibility requirements of this Chapter. Counsel who are Eligible to receive assignments at the time this Chapter is amended shall maintain their eligibility until July 15, 2024. As a condition of continued eligibility, counsel must successfully complete the application by July 15, 2024. If counsel fail to successfully complete the application by July 15, 2024, they will automatically become ineligible to receive Assignments until they do so.
2. An attorney who is Eligible for one or more case types prior to the amendment of this Chapter will not be deemed Eligible for additional case types until they comply with the amended Chapter.
3. Any attorney not previously Eligible to receive Assignments from the Commission when

this Chapter is amended must comply with the requirements of this Chapter and all other Commission rules to become Eligible.

### **SECTION 3. Minimum Eligibility Requirements**

To become and/or remain Eligible, an attorney must—at a minimum—satisfy the following conditions:

1. Application
  - a. Complete an application in the manner prescribed by the Commission through its Executive Director. The Executive Director will not act on an application until it is complete.
  - b. If any of the information on the application changes prior to the Executive Director acting on the application, the attorney must immediately notify the Commission via email prior to receiving a decision on the application.
  - c. No attorney will receive an Assignment until that attorney completes an application and is deemed Eligible to receive Assignments of that type.
  
2. Licensed to Practice
  - a. The attorney must be licensed to practice law in the State of Maine and be in good standing with the Maine Board of Overseers of the Bar.
  - b. The attorney must inform the Commission, in writing, of any complaint against the attorney filed with the Maine Board of Overseers of the Bar, or any entity charged with governing the conduct of attorneys in any other jurisdiction. The attorney must so inform the Commission within 5 days of knowing or having reason to know of such complaint. Failure to comply with this requirement is grounds for removal or suspension in accordance with Section 5 herein.
  - c. The attorney must inform the Commission, in writing, of any suspension of the attorney's privilege to practice law in any jurisdiction within 24 hours of receiving actual or constructive notice of the suspension. Failure to comply with this requirement is grounds for suspension or removal in accordance with Section 5 herein.
  - d. The attorney must inform the Commission, in writing, within 5 days of any criminal charge filed against the attorney in any jurisdiction and promptly inform the Commission of any disposition of such charge. Failure to comply with this requirement is grounds for suspension or removal in accordance with Section 5 herein.
  
3. Proficiency
  - a. The attorney must be knowledgeable of the Maine Rules of Evidence.

- b. The attorney must be knowledgeable of the rules of procedure applicable to the area(s) of law they practice.
- c. The attorney must be knowledgeable of the applicable law in their area(s) of practice.
- d. The attorney must be knowledgeable of the Maine Rules of Professional Conduct.
- e. The attorney must only represent clients in assigned cases for which they are Eligible. If an attorney is assigned to a case for which they are not Eligible, the attorney must—within three business days of receiving actual or constructive notice of the appointment—submit a complete application for the applicable case type, file a motion for appointment of Eligible co-counsel, or file a motion to withdraw from the case. If the attorney elects to withdraw from the case, the attorney must fulfill their obligations pursuant to the Maine Rules of Professional Responsibility and the relevant rules of procedure.

#### 4. Training

- a. Before being deemed Eligible and receiving Assignments, an attorney must satisfactorily complete a designated Commission-sponsored or Commission-approved training course in each area of the law for which the attorney is seeking to receive Assignments. This includes but is not limited to the following areas of law: criminal defense, lawyer of the day, juvenile defense, civil commitment, child protective, not criminally responsible release hearings, guardianship, and emancipation.
- b. The attorney shall meet any specific training requirements of any Specialized Panels.
- c. To maintain their eligibility, an attorney must annually complete 8 hours of continuing legal education (CLE) approved by the Commission. All the CLE hours must be related to the area(s) of law that the attorney practices.

#### 5. Technological Literacy

- a. The attorney must personally have the ability to do the following:
  - i. Open, read, reply to, forward, save, and print emails. Attach files to and download attachments from emails.
  - ii. Electronically sign documents.
  - iii. Scan, attach, and upload or email documents.
  - iv. Use ShareFile and other systems used by courts for the purpose of e-filing or sharing information with attorneys.
  - v. View, download, save, copy, and disseminate in a confidential manner all discovery received in electronic form.

- vi. Opt in and out of Rosters using the Commission's electronic case management system.

## 6. Annual Renewal

- a. The attorney must register with the Commission annually in a manner prescribed by the Commission.
- b. The annual renewal form will require the attorney to provide certain information, including but not limited to:
  - i. The attorney's contact information.
  - ii. A list of the qualifying CLE credits the attorney has completed for the relevant period.
  - iii. Whether they have had any bar complaints since their last successful renewal.
  - iv. Whether they have been charged with a civil or criminal offense since their last successful renewal.
  - v. Any other information deemed appropriate by the Executive Director.
- c. The annual renewal form may also require the attorney to make certifications, including but not limited to:
  - i. That the attorney has read, understands, and agrees to abide by all Commission rules and policies.
  - ii. That the attorney is licensed to practice law in Maine.
  - iii. A statement about what percentage of the attorney's work hours is spent on assigned cases.
  - iv. That the attorney has not been charged with a criminal offense which they have failed to disclose to the Commission.
  - v. That the attorney has not been the subject of any Board of Bar Overseers complaints which they have failed to disclose to the Commission.
  - vi. That all information submitted and certifications made on the annual renewal form are complete and accurate.
  - vii. Any certification designed to assess compliance with Commission rules or policies.
  - viii. Any other certifications deemed appropriate by the Executive Director.

- d. Any attorney who fails to successfully and timely complete the annual renewal will be deemed ineligible to receive Assignments. The attorney may have their eligibility restored upon successful completion of the annual renewal if they are in compliance with all Commission rules.

#### 7. Office, Telephone, and Electronic Mail

- a. The attorney must maintain an office or have the use of space that is reasonably accessible to clients and that permits the private discussion of confidential and other sensitive matters.
- b. The attorney must maintain a telephone number, which shall be staffed by personnel available for answering telephone calls or an answering service, an answering machine or voicemail capability that ensures client confidentiality.
- c. The attorney must maintain a confidential working e-mail account as a means of receiving information from and providing information to the Commission. The e-mail address must not be owned or accessible by any person or entity other than the attorney or the entity they own or are employed by.
- d. The attorney must keep the Commission and the courts in which the attorney represents indigent clients apprised of the attorney's work telephone number and postal and e-mail addresses. The attorney must ensure that the court has the ability to contact the attorney by e-mail, mail, and telephone.

#### 8. Attorney Cooperation with Procedures and Monitoring

- a. The attorney must comply with all applicable Commission rules and procedures.
- b. The attorney must comply with Commission monitoring and performance evaluations.
- c. The attorney must comply with any Commission investigation of complaints, billing discrepancies, or other information. Except as pertains to indigent cases assigned to the attorney, the Executive Director cannot require an attorney to disclose information that is privileged or made confidential by statute, court rule or court order.

### **SECTION 4. Eligibility**

#### 1. Cause

- a. The Executive Director may determine that an attorney is not Eligible to receive assignments generally or of a particular type if:
  - i. The attorney made any misrepresentation or material omission on any application they submitted to the Commission.
  - ii. The attorney fails to satisfy any requirement of any Commission rule.

- iii. The attorney has a prior criminal record which the Executive Director determines could affect the attorney's ability to provide high quality legal services.
- iv. The attorney has a prior bar disciplinary history which the Executive Director determines could affect the attorney's ability to provide high quality legal services.
- v. The Executive Director concludes that the attorney is unfit to provide high quality indigent legal services.

## 2. Process

- a. If the Executive Director determines that an attorney is not Eligible to receive Assignments generally or of a particular type pursuant to Section 5(1) of this Chapter:
  - i. The Executive Director's decision shall be in writing and shall reflect the Executive Director's reasoning in a manner sufficient to inform the attorney of the basis for the Executive Director's action.
  - ii. The Executive Director's decision that an attorney does not satisfy the minimum eligibility requirements to receive Assignments may be appealed to the full Commission pursuant to 4 M.R.S.A. §1804(3)(J) and Chapter 201 of the Commission rules.

## 3. Automatic Ineligibility

- a. If an attorney exceeds the maximum caseload standard as set forth by Chapter 4 of the Commission rules and has not been granted a waiver pursuant to Chapter 4, they will become ineligible to receive new case Assignments.
- b. Any attorney who voluntarily accepts a new case after having been deemed ineligible pursuant to subsection 2(a), above, will not be paid by the Commission for any time spent on the case.
- c. Any attorney who is assigned a case by a court without the attorney's consent after the attorney has been deemed ineligible pursuant to subsection 2(a), above, must within seven calendar days of receiving actual or constructive notice of the assignment, file a motion to withdraw from the case and notify the Commission of the improper assignment. The attorney will only be paid for time spent withdrawing from the case, any work performed on the case pending a court's ruling on the motion to withdraw and appointment of successor counsel, and the time spent communicating with the Commission about the improper assignment. If the attorney fails to file a motion to withdraw within seven calendar days of receiving notice of the assignment, the attorney will not be paid by the Commission for any time spent on the case.

**SECTION 5. Removal or Suspension of Eligibility**

1. Cause. The Executive Director may remove indefinitely or suspend an attorney's eligibility to receive Assignments, or to receive Assignments of a particular type:
  - a. For any failure to comply with this rule or any other Commission rule.
  - b. If the Executive Director determines that the attorney can no longer provide high quality indigent legal services based on the nature of any criminal charge.
  - c. If it is discovered that the attorney made any misrepresentation or material omission on any application they submitted to the Commission.
  - d. If the Executive Director determines that the attorney can no longer provide quality indigent legal services based on investigation by the Executive Director of any complaint or other information.
  
2. Process.
  - a. The Executive Director's decision to remove or suspend an attorney's eligibility shall be in writing and reflect the Executive Director's reasoning in a manner sufficient to inform the attorney of the basis for the Executive Director's action.
  - b. Attorneys removed indefinitely must re-apply to the Commission if they wish to receive Assignments in the future. Attorneys who are suspended need not re-apply but must demonstrate compliance with any conditions made part of a suspension.
  - c. Removal or suspension may also include a requirement that the attorney identify to the Commission all open assigned cases and file a motion to withdraw in each case within seven calendar days of the date of the suspension or removal decision. If an attorney is directed to withdraw from all their assigned cases and fails to do so within seven calendar days of the date of the suspension or removal decision, the attorney will not be entitled to payment from the Commission for work done on any of the cases after the date of the suspension or removal decision.
  - d. The Executive Director's decision to remove or suspend an attorney's eligibility may be appealed to the full Commission pursuant to 4 M.R.S.A. §1804(3)(J) and Chapter 201 of the Commission rules.

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STATUTORY AUTHORITY: 4 M.R.S.A. §1804(2)(B)

EFFECTIVE DATE:

June 25, 2010 – filing 2010-214 (Final adoption, major substantive)

AMENDED:

September 17, 2015 – filing 2015-152 (Final adoption, major substantive)

AMENDED:

May 14, 2024 – filing 2024-115