

Effective July 15, 2006
Revised 12/11/08,
4/24/09, 9/10/09,
12/24/09

Committee for Public Counsel Services Assigned Counsel Manual Policies and Procedures

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QUALIFICATION STANDARDS

The Committee has adopted qualification standards which attorneys must meet in order to receive assignments. Only those who have demonstrated their qualifications and have been certified by the Committee may be assigned cases and compensated by the Committee. Attorney certification may be subject to ongoing legal education requirements, and/or periodic recertification, depending on the type of assignment.

Those wishing to apply should consult the standards set forth herein and follow the procedures prescribed. Attorneys accepting cases for which they are not certified will not be compensated for those cases.

PERFORMANCE STANDARDS

The Committee has also adopted standards governing performance in various types of cases. See Chapter IV of this Manual. Attorneys accepting assignments must agree to handle their cases consistent with the guidelines. Complaints alleging attorney failure to comply with the Performance Guidelines will be investigated pursuant to Complaint Procedures adopted by the Committee. A copy of these procedures can be found in this manual at Chapter IV.

CRIMINAL PROCEEDINGS

DISTRICT COURT CASES

Attorneys who wish to accept misdemeanors and concurrent felonies in the District Court must (1) be accepted into the panel of attorneys of a county bar advocate program; and (2) complete a required training program. For information on becoming a bar advocate, contact the program in the counties in which you wish to practice. A directory of these programs is included in this manual. No attorney may be a member of more than two bar advocate programs, except attorneys certified as bilingual by the Committee.

Training Requirement

The initial training requirement is satisfied by attendance at a five-day seminar, Zealous Advocacy. The program is administered through Massachusetts Continuing Legal Education (MCLE) at various locations throughout the state several times a year. Applications are in the MCLE course catalogue. A schedule of training programs and registration information can be obtained by contacting MCLE [(617) 350-7006] or the CPCS Training Unit [(617) 482-6212].

Effective January 22, 2009, 6 hours of CLE is required to maintain certification for 2009. 8 hours of annual CLE is required to maintain certification for 2010 and thereafter.

Certification

Attorneys who complete the training requirement are certified to represent indigent adults who are charged with misdemeanors and felonies that are within the final jurisdiction of the District Court as set forth in G.L. c. 218, § 26. Attorneys who complete this training are also certified to represent indigent juveniles in juvenile delinquency cases (see [juvenile delinquency section](#) of this chapter).

Initial certification is provisional, subject to performance evaluation by the county bar advocate program conducted within 12 to 24 months. The evaluation will include file review of cases prepared for trial and cases of clients in custody. Cases will be selected for review by the Supervising Attorney conducting the evaluation. The certification determination will be based upon evidence of compliance with relevant Performance Guidelines set out in this manual at Chapter 4, with particular attention to:

- (1) prompt and consistent client communication
- (2) pretrial preparation including witness interviews and appropriate use of investigators
- (3) legal research and filing of memoranda of law
- (4) conduct of trials and litigation of substantive motions
- (5) cooperation with Resource Attorney
- (6) lack of substantiated client complaints.

Attorneys certified for District Court cases may also represent indigent defendants charged with Superior Court felonies in the district court for arraignment and bail hearings only. If the attorney is not Superior Court certified, s/he must immediately

notify the Bar Advocate Program of the need for prompt reassignment of a bind-over felony case after the arraignment.

Dangerousness hearings under G. L. c. 276, § 58A are considered substantial proceedings in the case, requiring the same certification as the case in chief. Dangerousness hearings in bind-over felony cases must be handled by Superior Court certified attorneys only. If a dangerousness hearing in a bind-over felony case is requested by the prosecutor, assigned counsel lacking certification to handle the case in chief should request a brief continuance and immediately notify the Bar Advocate Program to promptly reassign the case.

In order to handle probable cause hearings in District Court or Superior Court jurisdiction felonies (other than arraignment and bail hearing), attorneys must be certified for Superior Court cases. Additional certification is also required for Youthful Offender, CHINS, and care and protection cases.

Assignment of Cases

District Court cases are assigned through the county bar advocate programs.

Performance Requirements

Attorneys who accept District Court cases, must represent their clients at all stages of the criminal proceedings in the District Court. In the event of a final conviction in the District Court, it is the responsibility of the trial attorney to file a Notice of Appeal, Motion to Withdraw, and a Motion for Appointment of Substitute Counsel for Appeal. Trial counsel should then notify the CPCS Private Counsel Appeals Assignment Unit of the need for appellate counsel to be assigned.

By accepting assignments on District Court cases attorneys agree to abide by the CPCS Performance Standards Governing Representation of Indigents in Criminal Cases, which are found in this manual at Chapter 4, and are available online at www.mass.gov/cpcs.

MURDERS AND SUPERIOR COURT CRIMINAL MATTERS, INCLUDING PROBABLE CAUSE FELONIES IN DISTRICT COURTS

The Committee has adopted qualification standards for murder cases and Superior Court criminal matters, including probable cause felonies in district courts. Attorneys who wish to be eligible for assignments in these matters must apply in writing to the Chief Counsel of the Committee demonstrating that they meet the standards set. They will be notified of their status and, if they are approved, they will be placed on the panel. Those standards follow.

FIRST- AND SECOND-DEGREE MURDER CASES

Attorneys who wish to be certified to accept first- and second-degree murder cases must be individually approved by the Chief Counsel of CPCS. Each applicant must meet the minimum requirements set forth below. In addition, the Chief Counsel may consider

any and all additional information that s/he deems relevant to an appropriate decision on each application. In reaching this decision, the Chief Counsel receives a recommendation on each application from a Certification Advisory Board consisting of senior private practitioners from around the state.

Training Requirement: None

Minimum Requirements:

1. Five years' criminal litigation experience
2. Familiarity with practice and procedure of Massachusetts criminal courts
3. Lead counsel during the preceding five years in at least ten jury trials of serious and complex cases, at least five of which have been life felony indictments, in which the cases resulted in a verdict, decision or hung jury
4. Familiarity with and experience in the utilization of expert witnesses, including psychiatric and forensic evidence
5. Attendance at specialized training programs (such as MCLE or bar association criminal practice programs, National Institute for Trial Advocacy, National Criminal Defense College)

Application Procedure:

Attorneys seeking murder assignments should complete and submit an application form obtainable from the Committee's Certification Unit, as well as any additional information relevant to the above-stated requirements.

A list of cases which meet requirement (3) above must be included, giving the name of the case, indictment numbers and charges, names of judges and prosecutors, dates of trial, and a short statement of each case which includes a description of the major issues. Specific cases describing the applicant's utilization of expert witnesses should be included. In addition, the applicant should submit the names, dates, and sponsors of training programs which meet requirement (5) above, as well as the names and addresses of three criminal defense practitioners familiar with the applicant's work. The letter and attachments should be sent to:

CPCS Chief Counsel
44 Bromfield Street
Boston, MA 02108
Attn: Certification Coordinator for Criminal Cases

Applicants will be notified of the decision of the Chief Counsel within 8-12 weeks.

Certification for murder assignments is valid for a term of 4 or 5 years, after which each attorney may seek recertification. Eight (8) hours per year of relevant legal education are required to maintain this certification. Attorneys should maintain records of their continuing legal education in the event they apply for recertification.

Assignment of Cases:

Under the provisions of G.L. c. 211D, § 8, the Chief Counsel will assign murder cases to attorneys certified to handle such cases, subject to the approval of the justice making the determination of indigence.

Performance Requirements:

Attorneys who accept murder cases must represent their clients at all stages of the criminal proceedings except the appeal of a conviction to the Appeals Court or Supreme Judicial Court. In the event of a conviction, however, it remains the responsibility of the trial attorney to file a Notice of Appeal, a Motion to Withdraw, and a Motion to Appoint Substitute Counsel for Appeal, and to notify CPCS of the need for appellate counsel to be assigned.

In addition to representing the client in Superior Court, the attorney who accepts a murder case must provide representation at the probable cause hearing or any other District Court proceeding.

By accepting assignments on murder cases, attorneys agree to abide by the CPCS Performance Guidelines Governing Representation of Indigents in Criminal Cases, which are found in this manual at Chapter 4, and are available online at www.mass.gov/cpcs.

SUPERIOR COURT JURISDICTION CASES

In order to be certified to accept Superior Court cases (that is, any charge which is beyond final jurisdiction of the District Court as set out in G.L. c. 218, § 26), attorneys must be individually approved by the Chief Counsel of CPCS.

Attorneys who seek to obtain the approval of the Chief Counsel must meet the minimum requirements set forth below. In addition, the Chief Counsel may consider any and all additional information that s/he deems relevant to an appropriate decision on each application.

Certification for Superior Court assignments is valid for a term of 4 or 5 years, after which each attorney may seek recertification. Eight (8) hours per year of relevant legal education are required to maintain this certification. Attorneys should maintain records of their continuing legal education in the event that they apply for recertification.

Training Requirement:

There is no training prerequisite for initial certification; 8 hours of CLE per fiscal year is required for recertification.

Minimum Requirement:

Applicants who meet the criteria described in any one of the following four categories are eligible to apply to the Chief Counsel for approval for Superior Court cases. To apply, the applicant must:

(A) Be certified by CPCS to accept murder cases;

OR

(B) Meet the minimum requirements for certification for murder cases (outlined in this manual);

OR

(C) Have tried at least six Jury of Six or Superior Court criminal jury trials to verdict in the last five years as lead counsel;

OR

(D) Have other significant experience which demonstrates qualification to accept Superior Court assignments and demonstrates familiarity with the practice and procedures in the Massachusetts criminal courts.

Application Procedure:

Attorneys seeking Superior Court assignments should complete and submit an application form obtainable from the Committee's Certification Unit, as well as any additional information relevant to the above-stated requirements.

Applicants who are applying pursuant to section (B), (C), or (D) above should fully describe the cases which meet the requirements, giving the names of the cases, indictment numbers and charges, names of judges and prosecutors, dates of trials, and a short statement of each case which includes a description of the major issues. Specific cases describing the applicant's utilization of expert witnesses should be included. In addition, the applicant should submit the names, dates, and sponsors of training programs, as well as the names and addresses of three criminal defense practitioners familiar with the applicant's work. The letter and attachments should be sent to:

CPCS Chief Counsel
44 Bromfield Street
Boston, MA 02108
Attn: Certification Coordinator for Criminal Cases

The Chief Counsel will notify the applicant when a decision has been made.

Certification for Superior Court assignments is valid for a term of 4 or 5 years, after which each attorney may seek recertification. Eight (8) hours per year of relevant legal education are required to maintain this certification.

Assignment of Cases:

Superior Court certified attorneys may be assigned Superior Court jurisdiction cases in District Court as bar advocate duty attorneys, or may receive assignments from bar advocate programs immediately after arraignments handled by bar advocate duty attorneys who are not Superior Court certified. Superior Court certified attorneys may also be assigned cases in Superior Court after direct indictment.

Performance Requirements:

Attorneys who accept Superior Court cases must represent their clients at all stages of the criminal proceedings except the appeal of a conviction to the Appeals Court or Supreme Judicial Court. In the event of a conviction, however, it remains the responsibility of the trial attorney to file a Notice of Appeal, a Motion to Withdraw, and a Motion to Appoint Substitute Counsel for Appeal, and to notify CPCS of the need for appellate counsel to be assigned.

In addition to representing the client in Superior Court, the attorney who accepts a Superior Court case must provide representation at the probable cause hearing or any other District Court proceeding and any sentence appeal before the Appellate Division of the Superior Court.

By accepting assignments on Superior Court cases, attorneys agree to abide by the CPCS Performance Guidelines Governing Representation of Indigents in Criminal Cases, which are found in this manual at Chapter 4, and are available online at www.mass.gov/cpcs.

APPEALS AND OTHER POST-CONVICTION MATTERS

Attorneys who wish to accept assignments for criminal appeals and other post-conviction matters must be individually approved and must complete a training requirement.

Training Requirement:

Applicants for certification to accept these cases must complete an Appeals and Post-Conviction Training Program offered by CPCS. The training requirement may be completed either before or soon after the applicant is approved for post-conviction certification.

Application Procedure:

The applicant should submit a letter to the CPCS Director of Criminal Appeals explaining in detail why his/her experience qualifies him/her for appeals and post-conviction assignments. A summary of appellate and trial experience should be included, as well as a resume. Two legal writing samples should be submitted with the letter of application, preferably at least one of which addresses a criminal law issue. The applicant should include the names, addresses and phone numbers of two references

who are familiar with the applicant's abilities in legal research and writing, criminal defense and/or appellate practice.

The above package should be sent to:

Donald Bronstein
Director of Criminal Appeals
44 Bromfield Street
Boston, MA 02108

Certification:

Attorneys certified for Appeals and Post-Conviction assignments may receive assignments on criminal appeals, new trial motions, motions for relief from unlawful restraint, motions to revise and revoke, sentence appeals, and other post-conviction matters.

Performance Requirements:

By accepting these assignments, attorneys agree to abide by the Performance Standards Governing the Representation of Clients on Criminal Appeals and Post-Conviction Matters. A copy of these Performance Standards is provided with the acceptance letter and can be found in this manual at Chapter 4, and are available online at www.mass.gov/cpcs.

DELINQUENCY & YOUTHFUL OFFENDER PROCEEDINGS

JUVENILE DELINQUENCY PROCEEDINGS

Attorneys who wish to accept juvenile delinquency cases in the District and Juvenile Court must (1) apply for admission into a county bar advocate program; (2) be accepted into the panel of attorneys of a county bar advocate program; and (3) complete a required training program. For information on becoming a bar advocate, contact the program in the counties in which you wish to practice. A directory of these programs is included at the end of this manual. No attorney may be a member of more than two bar advocate programs, except attorneys certified as bilingual by the Committee.

Training Requirement

The initial training requirement is satisfied by attendance at a five-day seminar, Zealous Advocacy. The program is administered through Massachusetts Continuing Legal Education (MCLE) several times a year. Applications are in the MCLE course catalogue. A schedule of training programs and registration information can be obtained by contacting MCLE [(617) 350-7006] or the CPCS Training Unit [(617) 482-6212].

Certification

Attorneys who complete the training requirement are certified to represent indigent clients in juvenile delinquency proceedings in the Juvenile Courts and the juvenile session of District Courts, except for potential Youthful Offender matters ([see below](#)). Attorneys may also represent indigent juveniles charged with potential Youthful Offender matters in the Juvenile Courts and juvenile sessions of the District Courts for arraignment and bail hearings only. If the attorney is not Youthful Offender certified, s/he must immediately notify the Bar Advocate Program of the need for prompt reassignment of a potential Youthful Offender case after the arraignment.

Dangerousness hearings under G. L. c. 276, § 58A are considered substantial proceedings in the case, requiring the same certification as the case in chief. Dangerousness hearings in potential Youthful Offender cases must be handled by Youthful Offender certified attorneys only. If a dangerousness hearing in a potential Youthful Offender case is requested by the prosecutor, assigned counsel lacking certification to handle the case in chief should request a brief continuance and immediately notify the Bar Advocate Program to promptly reassign the case.

Potential Youthful Offender matters involve defendants under the age of 17 on the date of the alleged offense, who are either:

1) charged with an offense included in the CPCS list of presumptive Youthful Offender matters (see below, under Youthful Offender Certification) regardless of whether the prosecutor obtains an indictment;

or

2) charged with any other offense, and the prosecutor indicts the juvenile.

If the juvenile (under age 17) is charged with an offense on the CPCS Presumptive Youthful Offender list, regardless of whether the prosecutor seeks to indict the juvenile, then a juvenile delinquency certified attorney may represent the client at the arraignment only. The attorney must notify the court and local bar advocate program to assign a Youthful Offender attorney who will represent the client after the arraignment.

If the juvenile (under age 17) is charged with an offense not included in the CPCS Presumptive Youthful Offender list, and the prosecutor obtains an indictment, the juvenile delinquency certified attorney may represent the client only until the indictment is obtained. Once the juvenile is indicted, the attorney must immediately notify the court and local bar advocate program to assign a Youthful Offender attorney who will represent the client after the post-indictment arraignment.

Separate certification is required to handle CHINS, care and protection, and termination of parental rights cases (see CAFL certification sections of this chapter regarding these cases).

Initial certification for juvenile delinquency cases is provisional, subject to performance evaluation by the county bar advocate program conducted within 12 to 24 months. The evaluation will include file review of cases prepared for trial and cases of clients in custody. Cases will be selected for review by the Supervising Attorney conducting the evaluation. The certification determination will be based upon evidence of compliance with relevant Performance Guidelines set out in this manual at Chapter 4, with particular attention to:

- (1) prompt and consistent client communication
- (2) pretrial preparation including witness interviews and appropriate use of investigators
- (3) legal research and filing of memoranda of law
- (4) conduct of trials and litigation of substantive motions
- (5) cooperation with Resource Attorney
- (6) lack of substantiated client complaints.

Assignment of Cases

Juvenile Court and District Court cases are assigned through the county bar advocate programs.

Performance Requirements

Attorneys who accept assignment on juvenile delinquency cases must represent their clients at all stages of the delinquency proceeding in the Juvenile and District Court.

In the event of a final conviction in the Juvenile Jury Session or the District Court Jury of Six Session, it is the responsibility of the trial attorney to file a Notice of Appeal and Motion to Withdraw and to notify CPCS of the need for appellate counsel to be appointed.

By accepting juvenile delinquency cases, attorneys agree to abide by the CPCS Performance Standards Governing Representation of Indigent Juveniles in Delinquency and Criminal Cases, which are found in this manual at Chapter 4, and are available online at www.mass.gov/cpcs.

YOUTHFUL OFFENDER PROCEEDINGS

Attorneys who wish to accept assignments in Youthful Offender cases must (1) meet the minimum requirements, and (2) apply and be accepted to the panel.

Minimum Requirement:

Applicants who meet the criteria described in any one of the following six categories are eligible to apply to the Chief Counsel for approval for Youthful Offender cases. To apply, the applicant must:

(A) Be certified by CPCS to accept murder cases and have juvenile delinquency experience;

OR

(B) Meet the minimum requirements for certification for murder cases (outlined in this manual) and have juvenile delinquency experience;

OR

(C) Be certified by CPCS to accept Superior Court cases and have significant juvenile delinquency experience;

OR

(D) Meet the minimum requirements for certification for Superior Court cases (outlined in this manual) and have significant juvenile delinquency experience;

OR

(E) Have tried at least five Jury of Six or Superior Court criminal and/or juvenile delinquency jury trials to verdict in the last five years as lead counsel and have significant juvenile delinquency experience;

OR

(F) Have other significant experience which demonstrates qualification to accept Youthful Offender assignments and demonstrates familiarity with the practice and procedures in the Massachusetts juvenile and criminal courts.

Application Procedure:

Attorneys seeking Youthful Offender assignments should complete and submit the following form, together with all requested information as outlined in the application form:

Youthful Offender Certification - Application Form

The application, together with attachments, should be sent to:

CPCS
Deputy Chief Counsel, Private Counsel Division
44 Bromfield Street

Boston, MA 02108

Attn: Certification Coordinator for Criminal and YO Cases

The Deputy Chief Counsel or his/her designee will notify the applicant when a decision has been made.

Certification for Youthful Offender assignments is valid for a term of 4 or 5 years, after which each attorney may seek recertification. Eight (8) hours per year of relevant legal education are required to maintain this certification.

Certification:

Attorneys certified for Youthful Offender cases may accept assignments in the following cases:

For the specific charges listed below, if the defendant was under the age of 17 on the date of the alleged offense, only attorneys who are certified for Youthful Offender cases may be assigned to these cases, regardless of whether the prosecutor intends to indict the defendant.

Charges Requiring Youthful Offender Certification	Statute	Offense Codes
Aggravated Rape	c. 265, § 22	631
Armed Assault w/int Rob/Murder	c. 265, § 18	623, 624, 625
Armed Assault in a Dwelling	c. 265, §18A	626
Armed Burglary and Assault on Occupant	c. 266, §14	200
Armed Robbery	c. 265, § 17	621, 622
Assault & Battery on Retarded Person	c. 265, § 13F	S41, S97
Assault w/int Maim with Inj	c. 265, § 14	611
Assault w/int Maim/Kill/Murder	c. 265, § 15	S08, 613, 614
Assault w/int Rape	c. 265, § 24	636, 637, 638, 639
Attempted Murder	c. 265, § 16	S46
Attempted Arson	c. 266, § 5A	S80,
Burglary and Assault in a Dwelling	c. 266, § 14	201
Burning a Dwelling House	c. 266, § 1	500
Burning a Public Building	c. 266, § 2	501, 502
Carjacking	c. 265, § 21A	651
Carrying Firearm w/o Lic.	c. 269, § 10 (A, D)	702, 703
Gun Cases	c. 269, ¶ (a), (c), (d), or (j) of § 10 or § 10E	702, 703, 704, 705, 706, 707, 066
Home Invasion	c. 265, § 18C	666

Indecent Assault and Battery	c. 265, §§13B, F, H	S41, 606, 607, 610
Kidnapping	c. 265, § 26	640
Manslaughter	c. 265, § 13	603
Mayhem	c. 265, § 14	612
MV Homicide	c. 90, § 24G	050, 052, 053, 054, 055, 056, 057
Poss Shotgun Barrel Under 18"/Machine Gun	c. 269, § 10C	704, 705, 706
Poss Infernal Machine	C. 266, § 102, 102A	958
Rape	c. 265, §§ 22, 22A, 25	632, 633, 634, 635
Statutory Rape	c. 265, § 23	S01

Only the above enumerated charges will require assignment of a Youthful Offender attorney, REGARDLESS of the prosecutor's intent to indict.

Attorneys who are not Youthful Offender certified, but who are juvenile delinquency certified, may accept assignment of the above listed cases FOR ARRAIGNMENT ONLY. Delinquency certified attorneys must immediately notify the court and the bar advocate program that they can only represent the client at arraignment; assignment of a Youthful Offender certified attorney must be made immediately after the arraignment.

ALL OTHER DELINQUENCY CASES: Attorneys who are certified to handle juvenile delinquency cases can handle all other delinquency cases NOT LISTED ABOVE until the prosecution indicts the defendant as a Youthful Offender. **At that time**, if the attorney is not Youthful Offender certified, s/he must withdraw from the case, notify the client, court, and bar advocate program, and a Youthful Offender attorney must be reassigned to the case.

Assignment of Cases:

Youthful Offender certified attorneys may be assigned Youthful Offender cases in Juvenile Court and in the juvenile session of the District Court as bar advocate duty attorneys, or may receive assignments from bar advocate programs immediately after arraignments handled by bar advocate duty attorneys who are not Youthful Offender certified.

Performance Requirements:

Attorneys who accept assignment on Youthful Offender cases must represent their clients at all stages of the proceeding in the Juvenile/District Court.

In the event of a final conviction, it is the responsibility of the trial attorney to file a Notice of Appeal and Motion to Withdraw and to notify CPCS of the need for appellate counsel to be appointed.

By accepting Youthful Offender cases, attorneys agree to abide by the CPCS Performance Standards Governing Representation of Indigent Juveniles in Delinquency

and Criminal Cases, and the CPCS Performance Standards Governing Representation of Indigents in Criminal Cases, which are found in this manual at Chapter 4, and are available online at www.mass.gov/cpcs.

CIVIL PROCEEDINGS

MENTAL HEALTH PROCEEDINGS

Trial Certification

IN ORDER TO OBTAIN CERTIFICATION to accept assignments in mental health proceedings (e.g., civil commitments, guardianships, "Rogers" cases, "extraordinary treatment" cases), an attorney must [apply for admission](#) into the program. At least one year of litigation experience, preferably in mental health proceedings, is typically required. If accepted, he or she must attend the two-part training program described below and then successfully complete a [mentorship program](#). During an attorney's participation in the mentorship program, he or she will be provisionally certified.

Part 1: "Mental Health Proceedings and Advocacy for Assigned Counsel"

A comprehensive five-day review of substantive mental health law and the procedural rules applicable in mental health proceedings. Conducted from a defense perspective, emphasis is placed upon litigation technique and strategy. [Sponsored by CPCS and Mass. Continuing Legal Education, Inc. (MCLE). Written material: Goldman, S., [Mental Health Proceedings in Massachusetts: A Manual for Defense Counsel](#). See [training schedule](#) for next session.]

Part 2: "Clinical Aspects of Mental Illness and Treatment"

An overview of the clinical perspectives on the diagnosis and treatment of mental illness, with an emphasis on those issues typically raised in mental health proceedings (e.g., the prediction of dangerousness, treatment with antipsychotic medication). [Sponsored by CPCS and the University of Mass. School of Medicine, Dept. of Psychiatry. Instructors: faculty of UMass Dept. of Psychiatry. Written material: Selected articles by the faculty and others. See [training schedule](#) for next session.]

IN ORDER TO MAINTAIN MENTAL HEALTH CERTIFICATION, attorneys must attend at least eight (8) hours of [approved continuing legal education programs](#) in each fiscal year (i.e., 7/1 - 6/30). Written materials are developed for each program by the respective faculty.

Further, attorneys are expected to maintain an active mental health practice. To that end, in order to maintain certification, an attorney must accept at least five (5) new mental health assignments in each fiscal year.

Membership in the [Mental Health Litigation Unit E-Group](#) also is required.

Appellate Certification

In order to accept mental health appellate assignments, an attorney must be certified to accept mental health assignments, described above, must [apply for admission](#) to the appellate panel, and must then complete a training program entitled "Appellate Advocacy and Procedure in Civil Cases." [Sponsored by CPCS and MCLE. Faculty are experienced mental health and appellate counsel. Written materials are developed for each program by the faculty. See [training schedule](#) for next session.] Thereafter, mental health certification must be maintained, as described above.

Assignment of Cases

Assignments of all matters arising under G.L. c. 123 (i.e., commitments and authorization to treat committed persons) in the District, Boston Municipal Court and Superior Court Departments are

made by the Mental Health Litigation Unit on a rotating basis from lists of mental health-certified trial attorneys who wish to accept assignments in particular Divisions within these Departments.

Assignments in the Probate Court Department in guardianship proceedings are made by the courts on a rotating basis from lists of mental health-certified trial attorneys who wish to accept assignments in the particular Divisions of the Department. These lists are provided to the courts by the Mental Health Litigation Unit.

Assignments in mental health appeals are made by the Mental Health Litigation Unit on a rotating basis from the list of mental health appellate-certified attorneys.

Inclusion on trial-assignment lists is subject to the Mental Health Litigation Unit's geographical "[Assignment Policy](#)," effective on January 1, 2009.

Children & Family Law Proceedings

Children and Family Law (CAFL) Representation at the Trial Level

(Care and Protection, CHINS and Termination of Parental Rights Petitions)

Attorneys who wish to accept assignments from the Trial Court in care and protection, CHINS, and termination of parental rights cases must (1) apply for admission to the Children and Family Law (CAFL) trial panel; (2) successfully complete all required trainings; (3) work with a mentor assigned by CAFL; and (4) attend eight hours of CAFL-approved continuing legal education each fiscal year. Attorneys who wish to accept assignments from the Probate Court in certain guardianship of minor proceedings under the Uniform Probate Code, must meet additional requirements outlined below.

Application Procedure

Attorneys seeking certification to accept CAFL trial level assignments must submit an application for the CAFL trial panel certification program. Applications are available on the CPCS web site (www.publiccounsel.net). Preference is given to attorneys with an established practice, experience working with families, and litigation skills. Attorneys will be notified if they are accepted into the training program.

Training Requirements

Initial Certification

Attorneys accepted into the training program must attend a five-day seminar, "Children and Family Law Trial Panel Certification Training Program." Applicants with significant trial experience may apply for a waiver of the trial skills portion of the training which takes place during the last two days of training. The program is administered through Massachusetts Continuing Legal Education (MCLE) and is offered two or more times each year. Newly-certified CAFL trial panel attorneys must attend a 4-hour seminar, "Medical Treatment Decisions for Children in DCF Custody," administered by CPCS, within two years of the completion of the Certification training. This seminar is offered once a year.

Annual Requirements

Trial panel attorneys must complete 8 hours of CAFL-approved continuing legal education each fiscal year. The fiscal year begins on July 1 and concludes on June 30. Trial panel attorneys are required to satisfy the annual continuing education requirement beginning in the fiscal year after they successfully complete the CAFL Trial Panel Certification Training Program.

Continuing legal education is available at CAFL-sponsored trainings throughout the Commonwealth, MCLE, the CPCS Annual Training, and other approved seminars. A list of approved seminars is available on the CPCS web site, www.publiccounsel.net. To obtain approval for attending a program that is not on the list, attorneys must submit a request for approval (including a comprehensive description of the program, its length and a syllabus describing its contents and faculty) to the CAFL Training Director. Attorneys are urged to seek approval prior to attending such programs.

Attorneys must mail or email their CLE certificates or proofs of attendance to the CAFL Certification Coordinator (CPCS, 44 Bromfield Street, Boston, MA 02108 or rcaso@publiccounsel.net) on or before July 15 of each fiscal year.

Attorneys who are certified for both the CAFL trial and appellate panels need only take a total of 8 hours of approved CLEs each fiscal year.

Assignment of Cases

The CAFL Division provides the Juvenile, District, and Probate Courts with lists of CAFL-certified trial attorneys who wish to accept assignments in particular courts. Courts make assignments from these lists.

Assignment Requirements

To maintain certification, attorneys must regularly accept appointments to represent parents **and** children. Attorneys who do not satisfy this requirement may be removed from the panel at the discretion of the CAFL Trial Panel Director.

Provisional Certification

The CAFL Division assigns mentors to attorneys who satisfactorily complete the certification training. Attorneys are provisionally certified during the period of their mentorship. Provisionally-certified attorneys must work cooperatively with their assigned mentors. Mentors will update the CAFL Trial Panel Director about the work of each of their attorneys throughout the mentoring period.

The CAFL Trial Panel Director determines when the mentorship ends. If the Trial Panel Director determines that the provisionally-certified attorney no longer requires a mentor, the attorney will be fully certified and permitted to take additional trial court assignments without mentor supervision. At any time during the provisionally-certified attorney's mentorship, the Trial Panel Director may:

- (1) graduate the attorney from the mentor program;
- (2) remove the attorney's certification to take new CAFL trial court assignments;
- (3) remove the attorney from the panel and have his/her cases reassigned; or
- (4) place caseload restrictions or impose other conditions on the attorney.

Performance Requirements

By accepting assignments in the Trial Court in CAFL cases, attorneys agree to comply with all applicable CPCS Performance Standards. The Standards are contained in Chapter 4 of this manual and are available online at www.publiccounsel.net. Attorneys who accept CAFL trial assignments must represent their clients at all trial proceedings. Trial counsel is responsible for appellate proceedings until the CAFL Division assigns appellate counsel and appellate counsel enters an appearance. The CAFL Trial Panel Director may, at his or her discretion and when in the interests of a client, require an attorney to file a Motion to Withdraw and request the appointment of successor counsel.

Probate and Family Court Guardianship cases under the Uniform Probate Code

There is a separate certification process for attorneys who wish to accept assignments to represent minors in Probate and Family Court guardianship proceedings in which DCF is not a party.

Application Procedure

Attorneys who wish to apply for certification to accept CAFL trial level assignments in these Probate and Family Court guardianship cases must, in addition to being a CAFL-certified panel attorney, attend the guardianship of a minor certification program. Attorneys must submit a request for admission to the program which is available on the CPCS web site (www.publiccounsel.net). Preference may be given to experienced litigators with an established Probate and Family Court practice. Attorneys will be notified if they are accepted into the training program.

CHINS Appointments to Represent Children only

Attorneys who are **not** currently certified to accept CAFL assignments and wish to accept assignments to represent **children** in Child in Need of Services (CHINS) matters must (1) apply for admission to the CHINS-Child Only (CHINS-CO) panel; (2) successfully complete all required trainings; (3) work with a mentor assigned by CAFL; and (4) attend four hours of CAFL-approved continuing legal education each fiscal year.

Application Procedure

Attorneys who wish to apply for certification to accept trial level assignments through this panel must submit an application for the CHINS-CO certification program. Applications are available on the CPCS web site (www.publiccounsel.net). Applicants must be:

- 1) Current CPCS Bar Advocates who have an active juvenile delinquency practice;
- 2) Current CPCS Bar Advocates who have other significant experience in Juvenile Court;
- 3) Current CPCS Bar Advocates who have other significant professional experience working with youth; or
- 4) Attorneys who previously had an active child welfare/state intervention practice but whose CAFL certification has lapsed.

Training Requirements

CHINS-CO attorneys must complete 4 hours of CAFL-approved continuing legal education each fiscal year. The fiscal year begins on July 1 and concludes on June 30. CHINS-CO attorneys are required to satisfy the annual continuing education requirement beginning in the fiscal year after they successfully complete the CHINS-CO Panel Certification Training Program.

Continuing legal education is available at CAFL-sponsored trainings throughout the Commonwealth, MCLE, the CPCS Annual Training, and other approved seminars. A list of approved seminars is available on the CPCS web site, www.publiccounsel.net. To obtain approval for attending a program that is not on the list, attorneys must submit a request for approval (including a comprehensive description of the program, its length and a syllabus describing its contents and faculty) to the CAFL Training Director. Attorneys are urged to seek approval prior to attending such programs.

Attorneys must mail or email their CLE certificates or proofs of attendance to the CAFL Certification Coordinator (CPCS, 44 Bromfield Street, Boston, MA 02108 or rcaso@publiccounsel.net) on or before July 15 of each fiscal year.

Assignment of Cases

The CAFL Division provides the Juvenile Court with lists of CAFL-certified CHINS-CO attorneys who wish to accept assignments in particular courts. Courts make assignments from these lists.

Assignment Requirements

To maintain certification, attorneys must regularly accept appointments to represent children in CHINS matters. Attorneys who do not satisfy this requirement may be removed from the panel at the discretion of the CAFL Trial Panel Director.

Provisional Certification

The CAFL Division assigns mentors to attorneys who satisfactorily complete the certification training. Attorneys are provisionally certified during the period of their mentorship. Provisionally-certified attorneys must work cooperatively with their assigned mentors. Mentors will update the CAFL Trial Panel Director about the work of each of their attorneys throughout the mentoring period.

The CAFL Trial Panel Director determines when the mentorship ends. If the Trial Panel Director determines that the provisionally-certified attorney no longer requires a mentor, the attorney will be fully certified and permitted to take additional trial court assignments without mentor supervision. At any time during the provisionally-certified attorney's mentorship, the Trial Panel Director may:

- (1) graduate the attorney from the mentor program;
- (2) remove the attorney's certification to take new CHINS assignments;
- (3) remove the attorney from the panel and have his/her cases reassigned; or
- (4) place caseload restrictions or impose other conditions on the attorney.

Performance Requirements

By accepting assignments to represent children in CHINS cases in the Trial Court, attorneys agree to comply with all applicable CPCS Performance Standards. The Standards are contained in Chapter 4 of this manual and are available online at www.publiccounsel.net. Attorneys who accept CHINS trial assignments must represent their clients at all trial proceedings. Trial counsel is responsible for appellate proceedings until the CAFL Division assigns appellate counsel and appellate counsel enters an appearance. The CAFL Trial Panel Director may, at his or her discretion and when in the interests of a client, require an attorney to file a Motion to Withdraw and request the appointment of successor counsel.

Children and Family Law (CAFL) Representation at the Appellate Level

(Care and Protection, CHINS, Termination of Parental Rights, and Guardianship Petitions)

Attorneys who wish to accept CAFL appellate assignments must (1) apply for admission to the Children and Family Law (CAFL) appellate panel; (2) successfully complete all required trainings; (3) work with a mentor assigned by CAFL; and (4) attend eight hours of CAFL-approved continuing legal education each fiscal year.

Application Procedure

Attorneys seeking certification to accept CAFL appellate assignments must submit an application for the CAFL appellate certification program. Applications are available on the CPCS web site (www.publiccounsel.net).

Applicants must have the following minimum qualifications:

- (1) Demonstrated proficiency in legal research and writing; and
- (2) At least one of the following:
 - (a) Two years of child welfare trial experience;
 - (b) Primary authorship of two or more appellate briefs in other subjects;
 - (c) A recent appellate clerkship, substantial editing experience for a law journal, or publication of a law journal article.

Applicants must send to the CAFL Certification Coordinator a completed application, a resume, two legal writing samples, and two references from individuals who have knowledge of the applicant's qualifications, character, integrity, thoroughness, and research and writing abilities.

Attorneys will be notified if they are accepted into the training program.

Training Requirements

Initial Certification

Attorneys accepted into the program who are already certified to take trial-level CAFL appointments must attend the one-day course, "Appealing CPCS Children and Family Law Cases." Attorneys who are not currently certified to take trial-level CAFL appointments must attend the one-day course, "Appealing CPCS Children and Family Law Cases" and the three-day substantive-law portion of the trial panel certification course. The two-day trial skills portion of the trial panel certification course is not required. The CAFL appellate panel certification training is held annually.

Annual Requirements

Appellate panel attorneys must complete 8 hours of CAFL-approved continuing legal education each fiscal year. The fiscal year begins on July 1 and concludes on June 30. Appellate panel attorneys are required to satisfy the annual continuing education requirement beginning in the fiscal year subsequent to their completion of the CAFL Appellate Panel Certification Training Program.

Continuing legal education is available at CAFL-sponsored trainings throughout the Commonwealth, MCLE, the CPCS Annual Training, and other approved seminars. A list of approved seminars is available on the CPCS web site, www.publiccounsel.net. To obtain approval for attending a program that is not on the list, attorneys must submit a request for approval (including a comprehensive description of the program, its length and a syllabus describing its contents and faculty) to the CAFL Training Director. Attorneys are urged to seek approval prior to attending such programs.

Attorneys must mail or email their CLE certificates or proofs of attendance to the CAFL Certification Coordinator (CPCS, 44 Bromfield Street, Boston, MA 02108 or rcaso@publiccounsel.net) on or before July 15 of each fiscal year.

Attorneys who are certified for both the CAFL trial and appellate panels need only take a total of 8 hours of approved CLEs each fiscal year.

Assignment Requirements

To maintain certification, attorneys must accept at least one CAFL appellate appointment during the fiscal year of the initial certification training. Thereafter, attorneys must accept at least one CAFL appellate appointment every three fiscal years. To maintain certification, attorneys must accept appointments to represent parents **and** children. Attorneys who do not satisfy these requirements may be removed from the panel at the discretion of the CAFL Director of Appeals.

Provisional Certification

The CAFL Division assigns mentors to attorneys who satisfactorily complete the certification training. Attorneys are provisionally certified during the period of their mentorship. Provisionally-certified attorneys must work cooperatively with their assigned mentors. For each appellate assignment, the provisionally-certified attorney will send the mentor copies of the transcripts, exhibits and key pleadings. The mentor will review these materials to help the provisionally-certified attorney identify appellate issues and research strategy. The mentor will also edit drafts of briefs prior to submission, authorize the filing of the brief, help the provisionally-certified attorney prepare for oral argument, and help the provisionally-certified attorney address other issues related to the appeal.

The CAFL Director of Appeals determines when the mentorship ends. If the Director of Appeals determines that the provisionally-certified attorney no longer requires a mentor, the attorney will be fully certified and permitted to take additional appellate assignments without mentor supervision. At any time during the provisionally-certified attorney's mentorship, the Director of Appeals may remove that attorney's certification to take CAFL appellate assignments.

Performance Requirements

By accepting assignments for CAFL appeals, attorneys agree to comply with all CAFL trial and appellate level CPCS Performance Standards. The Standards are contained in Chapter 4 of this manual and are available online at www.publiccounsel.net. Attorneys must submit copies of all briefs filed to the Children and Family Law Division. If the case is closed before briefing, the attorney must notify the Children and Family Law Division of the reason the assignment is closed. The CAFL Director of Appeals may, at his or her discretion and when in interests of a client, require an attorney to file a Motion to Withdraw and/or remove an appellate assignment from an appellate attorney.

MINORS SEEKING JUDICIAL CONSENT FOR ABORTION

Attorneys who wish to accept assignments to represent minors seeking judicial consent for abortion must apply for admission to the Minors Seeking Judicial Consent for Abortion panel and successfully complete all required trainings.

Attorneys seeking certification to accept these assignments must submit an application. Applications will be available on the CPCS web site (www.publiccounsel.net) when the next training program is announced. Attorneys accepted must attend a two-hour training program, "Judicial Consent for Minors," which is co-sponsored by CPCS, the National Lawyers Guild, and the Women's Bar Association of Massachusetts. The program is offered periodically at locations throughout the state.

The Committee has adopted performance standards governing representation of minors seeking abortion. Attorneys who wish to be eligible to accept assignments in these cases must agree to abide by these standards, complete a training session, and regularly accept assignments.

For additional information, please contact:

Jamie A. Sabino, Esq., 52 Western Avenue, Cambridge, MA 02139
Tel: (617) 492-5085; Fax: (617) 492-5098; Email: klibaner@sprintmail.com

Sarah McClean, Esq., 101 Tremont Street, Suite 1107, Boston, MA 02108
Tel: (617) 482-8296; Fax: (617) 338-8299; Email: Smccln@aol.com or

Carol Rosensweig, Panel Director, CPCS, 44 Bromfield St., Boston, MA 02108
Tel: (617) 988-8403; Email: crosensweig@publiccounsel.net

Assignment of Cases:

CPCS provides a list of certified attorneys to clinics and some courts. The majority of the assignments are made by clinics.

Performance Requirements:

By accepting assignments on these cases attorneys agree to abide by the CPCS Performance Standards for Attorneys Representing Minors in Section 12S Hearings, which are found in this manual at Chapter 4, and are available online at www.publiccounsel.net.

SEX OFFENDER REGISTRY BOARD CASES

In order to receive case assignments in Sex Offender Registry Board proceedings at the Trial Court level, attorneys must (1) be eligible for certification for Superior Court or District Court criminal cases or (2) possess other substantial, relevant experience, and (3) complete a training program. In order to receive such assignments at the Appellate Court level, attorneys must be certified for SORB trial level cases, possess appellate experience, and be individually approved by the Deputy Chief Counsel or his/her designee.

Training Requirement:

Applicants for certification must complete the Representation in Sex Offender Registry Proceedings course offered by CPCS. Additional training presentations may be required due to changes in the law. Mentors with civil litigation experience will be made available by CPCS for consultation. Applications to fulfill this training requirement can be obtained from the CPCS Training Unit in Boston (617) 482-6212.

Application Procedure:

The completed application for training should be returned to the CPCS Training Unit, 44 Bromfield Street, Boston, MA phone: (617) 482-6212; fax: (617) 988-8350. Applications by attorneys who are not certified for Superior or District Court criminal assignments, and applications for SORB Appeals cases should be made by letter detailing relevant experience to the CPCS SORB Assignment Coordinator.

Assignment of Cases:

Cases will be assigned by the CPCS Boston office. Notices of Assignment will be sent by FAX, with next day confirmation of acceptance by counsel required. Attorneys without FAX numbers, but who wish to receive these assignments, should telephone the CPCS SORB Assignment Coordinator at (617) 482-6212 to make arrangements for notification.

Attorneys are requested to inform CPCS of the number of case assignments desired per quarter. Please inform the SORB Assignment Coordinator at (617) 482-6212.

Performance Requirements:

By accepting assignments of these cases attorneys agree to abide by the CPCS Performance Standards for Attorneys Representing Clients in Sex Offender Registry Board matters, which are found in this manual at Chapter 4, and are available online at www.mass.gov/cpcs.

WAIVERS OF TRAINING REQUIREMENTS

CPCS has instituted training requirements for certification in most categories of cases in order to assure that each attorney accepting assignments has sufficient training to provide high quality representation. The training requirement is rarely waived.

A request for a waiver will be considered only if the applicant has exceptional experience in the field in which s/he seeks certification. The applicant requesting a waiver must submit a letter to the Director of the appropriate certification panel explaining in detail why the training requirement should be waived. The letter should describe the applicant's litigation experience, familiarity with practice and procedure of Massachusetts courts, and familiarity with the area of substantive law in which the waiver is sought. Specific information should be provided about cases in which the applicant has provided representation as lead counsel, including court, docket number, names of judges and opposing counsel, dates of court appearances, and a description of the issues in each case. Specific cases describing the applicant's utilization of expert witnesses should also be included. Information about specialized training courses the applicant has attended or taught should be provided, including the names, dates and sponsors of the training programs.

Waiver of a training requirement is within the discretion of the Chief Counsel, who may consider any additional information s/he considers relevant.