

# MAINE STATE LEGISLATURE

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# 117th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1995

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Legislative Document

No. 237

S.P. 97

In Senate, January 24, 1995

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**An Act to Provide Statutory Procedures for Grievances against Attorneys.**

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Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "May M. Ross".

MAY M. ROSS  
Secretary of the Senate

Presented by Senator SMALL of Sagadahoc.

2 Be it enacted by the People of the State of Maine as follows:

4 Sec. 1. 4 MRSA c. 18 is enacted to read:

6 **CHAPTER 18**

8 **ATTORNEY GRIEVANCE BOARD**

10 **§931. Establishment; appointment; terms**

12 The Attorney Grievance Board, referred to in this chapter as  
14 the "board," is established and shall administer the provisions  
16 of this chapter. The board consists of 7 persons, 2 of whom are  
18 attorneys appointed by the Attorney General and 4 of whom are  
members of the public appointed by the Governor. Board members  
serve for a term of 3 years, except that initial appointments by  
the Attorney General are for one and 2 years respectively and by  
the Governor are for one, 2, 3 and 4 years respectively.

20 The 6 appointed board members shall, by an affirmative vote  
22 of at least 5 members, elect a 7th member to act as chair. The  
chair serves for a term of 3 years.

24 A board member may not serve more than 2 full terms.

26 **§932. Removal; vacancies**

28 An appointed board member may be removed by the appropriate  
30 appointing authority for misconduct, incompetency, neglect of  
duty or other sufficient cause.

32 The Attorney General and the Governor shall appoint members  
34 to vacancies on the board as they occur or upon expiration of  
terms.

36 The chair may be removed by affirmative vote of at least 5  
38 board members for reasons of misconduct, incompetency, neglect of  
duty or other sufficient cause.

40 **§933. Qualifications**

42 The members of the board must be residents of this State. A  
44 person appointed as a public member or a member of that person's  
immediate family may not derive any income from the practice of  
46 law.

48 **§934. Compensation; expenses**

50 The members of the board are entitled to compensation of \$75  
a day for each day of attendance at board meetings or board

2 hearings. In addition, the members of the board are reimbursed  
3 for all necessary expenses, including expenses for travel,  
4 incurred through service as board members. Reimbursement for  
5 expenses must be provided at the same rate as authorized for  
6 state employees.

7 **§935. Employees**

8 The board may employ such clerical and investigative  
9 assistance as may be necessary to carry out its duties.

10 **§936. Annual report**

11 The board shall submit to the Legislature, the Governor and  
12 the Attorney General an annual report on its activities under  
13 this chapter on or before January 1st of each year.

14 **§937. Authority**

15 **1. Complaints.** The board has authority to investigate  
16 complaints against attorneys filed by any member of the public  
17 alleging the violation of a law, a professional responsibility or  
18 trust or the American Bar Association Model Rules of Professional  
19 Conduct. Written complaints received by the board must be  
20 retained as confidential unless the board chooses to make the  
21 complaint public.

22 **2. Review and investigation.** The board shall conduct such  
23 review and investigation of each complaint received as it  
24 determines appropriate and shall advise the complaining party in  
25 writing of its determination with regard to the complaint.  
26 Copies of that written notification must be provided to the  
27 Attorney General.

28 **3. Response by attorney.** The board shall promptly notify  
29 the attorney named in a complaint that a complaint has been filed  
30 with the board. The board shall request that the attorney named  
31 in the complaint respond to the complaint within 15 days of  
32 transmission of the complaint to the attorney by the board.

33 **4. Notice of meeting.** The complaining party and the  
34 attorney named in the complaint must be notified of any meeting  
35 of the board at which the complaint is to be discussed and have  
36 the right to attend any such meeting of the board.

37 **§938. Hearings**

38 The board may conduct public hearings if it determines them  
39 necessary to support its investigative and fact-finding  
40 activities. When a hearing is held, the complaining party and  
41 the attorney named in the complaint must be notified of any  
42 meeting of the board at which the complaint is to be discussed  
43 and have the right to attend any such meeting of the board.

2 the attorney named in the complaint must be notified of the  
3 hearing by certified mail at least 2 weeks in advance of the  
4 hearing. Copies of the hearing notices must also be transmitted  
5 to the Attorney General and the Chief Justice of the Supreme  
6 Judicial Court.

7 **§939. Hearing procedures**

8  
9 **1. Cross-examination.** At any hearing, the board, the  
10 complaining party and the attorney who is the subject of the  
11 complaint may present witnesses and documentary evidence as they  
12 determine appropriate and may cross-examine. The Attorney  
13 General may appear at the hearing, present witnesses and evidence  
14 and cross-examine.

15 **2. Witnesses sworn; testimony transcribed.** All witnesses  
16 must be sworn and all testimony must be recorded in a manner that  
17 allows it to be transcribed if necessary.

18 **3. Witnesses.** The board may sequester witnesses as it  
19 determines necessary.

20 **4. Findings and opinions of board.** During hearings, the  
21 board is not bound by the strict rules of evidence that govern  
22 court proceedings in this State, but any findings and opinions of  
23 the board must be based upon competent and substantial evidence.

24 **5. Hearings.** Hearings held by the board must be public and  
25 a record of the hearings must be available for public inspection  
26 unless the board, by an affirmative vote, orders all or any  
27 portion of the hearing or the hearing record be closed to the  
28 public. When the board votes that any portion of a hearing or  
29 hearing record be closed to the public, the reasons for the  
30 board's action must be specified in writing.

31 **§940. Subpoena power**

32 The board may, through its chair or any other member,  
33 administer oaths, subpoena witnesses and compel the production of  
34 books, records, papers, documents, correspondence and other  
35 material and records that the board considers relevant to the  
36 proceedings before it.

37 **§941. Decisions**

38 **1. Findings; Attorney General to take action.** When a  
39 hearing is held upon a complaint against an attorney alleging the  
40 violation of a law, professional responsibility or trust or the  
41 American Bar Association Model Rules of Professional Conduct, the  
42 board shall issue findings of fact, conclusions and  
43 recommendations.

2 recommendations of appropriate action, if any, to be taken  
3 against that attorney. These findings must be transmitted to the  
4 Attorney General, who shall take action upon them within 30  
5 days. A copy of these findings, conclusions and recommendations  
6 must also be transmitted to the Chief Justice of the Supreme  
7 Judicial Court.

8 **§942. Attorney General authority not limited**

10 Nothing in this chapter may be interpreted to limit the  
11 independent authority of the Attorney General to bring matters  
12 related to the conduct of attorneys to the attention of the  
13 Supreme Judicial Court on the Attorney General's own motion.

14 **§943. Registration fee**

16 Every attorney admitted to practice in the State shall pay  
17 an annual registration fee of \$100 to the Department of the  
18 Attorney General. Fees generated under this section must be  
19 placed in a nonlapsing account to carry out the purposes of this  
20 chapter.

22  
24 **STATEMENT OF FACT**

26 This bill establishes the Attorney Grievance Board under the  
27 jurisdiction of the Department of the Attorney General.  
28