

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 237

S.P. 97

In Senate, January 24, 1995

An Act to Provide Statutory Procedures for Grievances against Attorneys.

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
28 jurisdiction of the Department of the Attorney General.