

MAINE STATE LEGISLATURE

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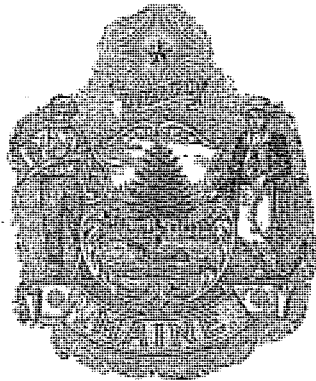
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CHAPTER 84.

Clerks of Courts. County Attorneys and Attorneys at Law.

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Clerks of the Judicial Courts.

Sec. 1. Election; tenure. R. S. c. 81, § 1. Clerks of the judicial courts shall be elected and notified, their elections determined and vacancies filled in the same manner, and they shall enter upon the discharge of their duties at the same time as is provided respecting county commissioners, but they shall hold their offices for four years.

See c. 7, § 53; c. 83, §§ 1-4; 107 Me. 514.

Sec. 2. Bond. R. S. c. 81, § 2. Before entering upon the discharge of official duty, each clerk shall give a bond to the state, to be lodged in the office of its treasurer, approved by the governor and council, in the sum of eight thousand dollars, with two or more sureties, conditioned that he will faithfully perform all the duties of his office, pay over all moneys, and safely keep and immediately deliver all records, files, papers, muni-ments in said office and property of the county, as required by law.

See Const. Me. Art. ix. § 1; 60 Me. 429.

Sec. 3. To account for moneys received to county treasurer. R. S. c. 81, § 3. He shall keep a true and exact account of all moneys which he receives, or is entitled to receive, for services by virtue of his office, and shall pay the same to the county treasurer for use of the county in the manner required by law; all other moneys belonging to the county shall be paid in thirty days after they are received by him; and if, in either case he neglects to do so, he shall pay twenty-five per cent interest thereon until paid; and the county treasurer shall notify the treasurer of state of any such known delinquency, and the clerk's bond shall then be sued.

See c. 117, § 40.

Sec. 4. Receive and discharge fines and costs voluntarily paid. R. S. c. 81, § 4. He shall receive all fines, forfeitures and bills of costs, imposed or accruing to the use of the state, when paid or tendered to him before a precept is issued to enforce collection; give discharges therefor and enter them of record.

Sec. 5. Copies of law cases in which state is a party, to be furnished. R. S. c. 81, § 5. He shall furnish to the attorney-general full copies of all cases described in section forty-six of chapter eighty-two, in which the state is a party, thirty days before the session of the law court for that district. When the papers in such cases are not filed more than thirty

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days before such session, they shall be furnished immediately after they are filed.

Sec. 6. To complete records of deceased clerk. R. S. c. 81, § 6. Under direction of the supreme judicial court, he shall complete unfinished records of a former clerk deceased, when from entries on the dockets and papers on file it sufficiently appears what judgment was rendered. Such record, when approved by the court, is valid.

60 Me. 429.

Sec. 7. Duties as to lists of justices, discharges of soldiers and seamen, and files of state paper. R. S. c. 81, § 7. He shall record the list of magistrates furnished by the secretary of state, in a suitable book; and such record, and also copies thereof duly attested by him, are legal, but not conclusive evidence of the due appointment and qualification of all such officers. He shall also record in a book kept for that purpose, properly indexed, certificates of discharge of soldiers and seamen from the army and navy of the United States; certified copies from such record, when the originals are lost, shall be evidence in court, and in the absence of other proof, have the same effect as the originals. He shall preserve and file, for public inspection, all copies of the state paper forwarded to him by the publisher thereof, as required by law.

Resolves of 1911, c. 149; see c. 86, § 71; c. 118, § 4; 60 Me. 429.

Sec. 8. Penalty for taking illegal fees. R. S. c. 81, § 8. A clerk, who exacts or receives more than his lawful fees, forfeits fifty dollars, to be recovered by indictment.

See c. 111, § 19; c. 133, § 14.

Sec. 9. Deputy clerk. R. S. c. 81, § 9. 1905, c. 25. Any clerk may appoint a deputy of either sex to be paid out of the clerk's salary, for all whose official acts the clerk is responsible. Before entering upon his official duties, such deputy shall be sworn and give bond to the clerk, approved by the county commissioners and lodged in the office of the county treasurer, in the sum of eight thousand dollars, with two or more sureties, conditioned that he will faithfully perform all the duties required of clerks of courts. Whenever the clerk is unable to perform the duties of his office, said deputy shall have all the powers and perform all the duties of clerk, and be subject to the same penalties for any neglect thereof.

Sec. 10. Court may appoint a clerk pro tem. in absence of clerk; oath and bond. R. S. c. 81, § 10. When a clerk is absent or the office is vacant, and an existing or immediate session of the court renders it necessary, the court may appoint a clerk to supply the vacancy, until an appointment is made by the governor and council, or during such absence; who shall be sworn, and give such bond as the court orders.

Sec. 11. Record of civil cases. 1909, c. 221. After the rendition of final judgment or decree in any civil case at law or in equity, the clerk shall as soon as may be make such a record thereof as the court by general rule or special order may direct. If either party, however, files a request and tenders the fees therefor, a full, extended record shall be made. The supreme judicial court may establish the form of such full extended record.

Sec. 12. Record of criminal cases. R. S. c. 81, § 12. In indictments for felonies, clerks shall make extended records of the process, proceed-

ings, judgment and sentence. In other indictments, it is sufficient to record the title of the case, the nature of the indictment, the term when it was found, the proceedings in brief thereon, and the judgment and sentence of the court. In criminal prosecutions brought up by appeal from inferior courts, it is sufficient to record the title of the case, the nature and date of the complaint, the name and official character of the magistrate before whom the case was tried, and the sentence appealed from and its date; to be followed by correct minutes of the proceedings and judgment in the appellate court.

Sec. 13. Examination and correction of records. R. S. c. 81, § 13. The supreme judicial court shall cause the records of each clerk to be examined at least as often as there is a change of clerk, and when found deficient, direct them to be immediately made or corrected, and when such order is not obeyed, the fact of such deficiency shall be certified to the treasurer of state, who shall cause the clerk's bond to be sued.

60 Me. 429; 70 Me. 432.

Sec. 14. Disposal of money collected by suit on clerk's bond. R. S. c. 81, § 14. The money recovered in such suit shall be applied, under direction of the court, to complete the deficient records. If more than sufficient, the balance inures to the state. If not sufficient, the balance may be recovered by the treasurer of state, in an action on the case founded on the bond and facts.

Sec. 15. No recording officer shall be attorney or sue in his own court, nor draft or aid in drafting any paper which he is required to record. R. S. c. 81, § 15. No clerk, register or recording officer of any court of the state, shall be attorney or counselor in any suit or matter pending in such court; neither shall he commence actions to be entered therein; or draft or aid in drafting any document or paper which he is by law required to record, in full or in part, under a penalty not exceeding one hundred dollars, to be recovered by indictment for the benefit of the county.

Note. Duplicates of plans filed with clerks of courts to be filed in registry of deeds, c. 12, § 22. Clerks of courts to make returns of fines collected under inland fish and game laws, c. 33, § 91; of libels for divorce to state registrar of vital statistics, c. 64, § 34; to make abstract on record, of pardon or commutation of sentence, c. 140, § 6.

County Attorneys.

Sec. 16. Election of county attorneys; vacancies. R. S. c. 81, § 16. County attorneys shall be elected and notified, their elections determined and vacancies filled in the same manner, and they shall enter upon the discharge of their duties at the same time as is provided respecting county commissioners, but they shall hold office for two years. None but a permanent resident of the county shall hold such office, and removal therefrom vacates the office.

See c. 7, § 53; c. 83, §§ 1-4; 71 Me. 384.

Sec. 17. Duties in civil proceedings where county is interested; compensation. 1905, c. 177. The county attorney in each county shall appear for the county, under the direction of the county commissioners, in all suits and other civil proceedings in which the county is a party or interested, or in which the official acts and doings of said county commissioners are called in question, in all the courts of the state, and in such suits and pro-

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ceedings before any other tribunal when requested by said commissioners. All such suits and proceedings shall be prosecuted by him or under his direction. Writs, summonses, or other processes served upon the county or said commissioners shall forthwith be transmitted by them to him. The county commissioners may employ other counsel if in their judgment the public interest so requires. For the services herein mentioned the county attorney shall receive no compensation other than the salary from the state, except actual expenses when performing said services, the same to be audited by the county commissioners and paid from the county treasury. This section, however, shall in no way relate to or give the county attorney control of litigation in which the county is not financially interested although the official acts and doings of the county commissioners may be called in question.

Sec. 18. Duties in criminal proceedings. R. S. c. 81, § 17. The county attorney shall attend all criminal terms held in his county, and act for the state in all cases in which the state or county is a party or interested, and in the absence of the attorney-general from a term in the county, shall perform his duties in state cases under directions from him, in the county, and he shall appear and act for the state with the attorney-general, in the law court, in all state cases coming into said court from his county; but no additional compensation shall accrue to the county attorney by the discharge of such duties.

67 Me. 129.

Sec. 19. To enforce collection of fines and costs; as to examination of officers' bonds; penalty for neglect. R. S. c. 81, § 18. He shall enforce the collection and payment to the county treasurer, of all fines, forfeitures and costs, accruing to the state, and the faithful performance of their duties by sheriffs, coroners and constables, and give information to the court of their defaults in this respect; and shall annually move the county commissioners, at their meeting next following the third Tuesday of June, to examine and consider the sufficiency of the sheriffs' and coroners' bonds. If he neglects either of said duties, he forfeits to the state not more than one hundred dollars, to be recovered in an action of debt, in the name of the treasurer of state.

See c. 85, § 3.

Sec. 20. Annual report to attorney-general; penalty for neglect. R. S. c. 81, § 19. He shall, annually, by the twentieth day of November, make such a report to the attorney-general of the business done in his office during the year ending on the first day of said November as is required by section seventy-three of chapter eighty-two and failing to do so, he forfeits one-half of his salary for the current quarter, to be deducted by the governor and council in drawing his salary warrant, unless they are satisfied that there was reasonable cause therefor.

Sec. 21. Appointment of temporary substitute. R. S. c. 81, § 20. When he does not attend a criminal session, or the office is vacant, the court may appoint an attorney to perform his duties during the session, and allow him a reasonable compensation, to be paid from the county treasury, and the justice shall notify the treasurer of state, who shall deduct the same

from the salary of such county attorney and forward the same to such county treasurer.

67-Me. 129.

Sec. 22. Restrictions and obligations. R. S. c. 81, § 21. He is under the same restrictions as to fees, and the same obligations as to witnesses as are imposed on the attorney-general by sections seventy and seventy-four of chapter eighty-two.

Sec. 23. Assistant county attorney for Cumberland county; duties. R. S. c. 81, § 22. The county attorney of the county of Cumberland may appoint an assistant, to be approved by the justice of the superior court for said county. Said assistant shall take the oath prescribed for county attorneys; and assist the county attorney in the ordinary duties of his office, in the drawing of indictments, in the hearing of complaints before the grand jury, and in the preparation and trial of criminal causes. He shall, when directed by the county attorney, act as counsel for the state in the trial of complaints, before judges of municipal and police courts and trial justices.

Note. Duties of county attorneys as to enforcing tax laws, c. 9, § 10; shall represent interests of state at hearing for abolishment of grade crossings, c. 24, § 34; shall assist commissioner of agriculture in enforcing pure food law, c. 36, § 37; to enforce laws relating to dairy products, c. 37, § 25.

County attorneys shall collect compensation of county commissioners for assessment of damages in condemnation proceedings, c. 83, § 26.

County attorneys to enforce compliance with order of public utilities commission to make repairs, c. 56, § 53.

Duties as to delinquent fines, forfeitures and costs in criminal cases, c. 138, §§ 16, 17.

Attorneys at Law.

Sec. 24. Attorneys, residents of other states or foreign countries, may be admitted to practice in courts of this state. R. S. c. 81, § 23. Practicing attorneys, residents of other states and territories, or from foreign countries, may be admitted on motion to try cases in any of the courts of this state by such courts, but shall not be admitted to the general practice of law in this state without complying with the provisions of the following section; provided, that where any applicant, residing within or without the state, who has been a member of the bar of another state, in good standing and in active practice, for at least three years, shall furnish the supreme judicial court a certificate of admission to practice in the court of last resort of such state, or a certificate of admission to any district court of the United States, together with the recommendation of one of the judges of the court of last resort of such state, said supreme judicial court may in its discretion, if satisfied as to his qualifications, admit such person to practice on motion made by some member of the bar of said court.

Sec. 25. Qualifications necessary to be admitted to practice law. R. S. c. 81, § 24. Every other person who shall be of full age, a resident and a citizen of the United States and of a good moral character, may be admitted to practice as an attorney and counselor at law, and solicitor and counselor in chancery, in all the courts of record of this state on motion made in open court, but the applicant shall first produce the certificate hereinafter provided for from the board of examiners, that he possesses sufficient learning in the law, and moral character and ability to enable him to properly practice as an attorney and counselor at law and solicitor and counselor in chancery in the courts of this state. No person shall be entitled to practice as an attorney and counselor at law and solicitor and

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counselor in chancery in this state until he shall be licensed so to do by said courts. No person shall be denied admission or license to practice as an attorney at law on account of sex.

Sec. 26. Appointment of commissioners for examination of applicants; tenure; meetings. R. S. c. 81, § 25. The board of examiners, for the examination of applicants for admission to the bar, shall be composed of five competent lawyers of the state; one member of said board shall be appointed annually by the governor on the recommendation of the chief justice of the supreme judicial court and shall hold office for the term of five years beginning on the first day of September of each year. Vacancies occurring from death, resignation, removal or inability to act, shall be filled in like manner for the unexpired term. Such board shall hold at least two sessions annually at such times and places in the state as the supreme judicial court shall direct, for the purpose of examining all applicants for admission to the bar, as to their legal learning and general qualifications to practice in the several courts of the state as attorneys and counselors at law and solicitors and counselors in chancery and, upon such examination being had, the board shall issue to such applicants as shall pass the required examination a certificate of qualification stating the standing of the applicants and recommending their admission to the bar. Such board shall elect from their number a secretary and shall make such rules and regulations relative to said examination as to them may seem proper. The president of said board shall be the member whose term of office soonest expires. Three members of said board shall constitute a quorum for the transaction of business.

See c. 117, §§ 54, 55.

Sec. 27. Qualifications of applicants; mode of examination; grade of standing. R. S. c. 81, § 26. The residences and names of the applicants shall be made to appear to said board and satisfactory evidence shall also be produced by said applicants of their good moral character and of their having pursued the study of law in the office of some attorney or in some recognized law school or university for at least three years prior to such examination; and a fee to be fixed by said board of not more than twenty dollars shall accompany the application. The applicant shall be required to submit to a written examination which shall be prepared by said board, also to an oral examination by the board, if deemed necessary, and shall be required to answer correctly a minimum of seventy per cent of the questions given him to entitle him to the certificate of the board. The board shall, however, have power to establish such higher grades of standing as to them may seem proper.

Sec. 28. Examination papers shall be kept on file; second examination. R. S. c. 81, § 27. The examination papers shall be kept on file in the office of the secretary of the board, and a record kept of each application, the name of the applicant, and his qualifications and general standing as ascertained by such examination, and the secretary of the board shall furnish each applicant with a card, showing the proficiency he has attained in each branch or subject upon which he has been examined, whether a certificate is issued or not. Any applicant failing to pass the examination may again

apply after six months, by showing to the board that he has diligently pursued the study of the law six months prior to the examination; if such second application is within one year after his first examination, he shall not be required to pay an extra fee for the second examination.

Sec. 29. Attorney's oath. R. S. c. 81, § 30. Upon admission to the bar, every applicant shall, in open court, take and subscribe an oath to support the constitution of the United States, and also take the following oath:

"You solemnly swear, that you will do no falsehood, nor consent to the doing of any in court, and that if you know of an intention to commit any, you will give knowledge thereof to the justices of the court or some of them, that it may be prevented; you will not wittingly or willingly, promote or sue any false, groundless or unlawful suit, nor give aid or consent to the same; that you will delay no man for lucre or malice, but will conduct yourself in the office of an attorney within the courts, according to the best of your knowledge and discretion, and with all good fidelity, as well to the courts, as to your clients. So help you God."

See c. 124, § 12; 64 Me. 145, 150.

Sec. 30. Person not admitted, cannot recover pay for services. R. S. c. 81, § 31. No person commencing practice as an attorney or counselor at law in any other state or place, or in any court in this state, without the qualifications and oaths aforesaid, is entitled to demand or recover any remuneration for his professional services rendered in this state.

63 Me. 183.

Summary Proceedings for Payment of Money Collected.

Sec. 31. Summary proceedings against attorney failing to pay money collected. R. S. c. 81, § 32. If an attorney at law receives money or any valuable thing on a claim left with him for collection or settlement, and fails to account for and pay over the same to the claimant for ten days after demand, he is guilty of a breach of duty as an attorney; and such claimant may file in the office of the clerk of the supreme judicial court in the county where such attorney resides, a motion in writing, under oath, setting forth the facts; and thereupon any justice of the supreme judicial court in term time or in vacation shall issue a rule, requiring the attorney to appear on a day fixed and show cause why he should not so account and pay, and to abide the order of such justice in the premises; which shall be served by copy in hand at least five days before the return day.

113 Me. 457.

Sec. 32. Procedure. R. S. c. 81, § 33. If he then appears, he shall file an answer to such motion, under oath, and such justice may examine the parties and other evidence pertinent thereto. If he does not appear and answer, the facts set forth in the motion shall be taken as confessed; and in either case such justice shall render such decree as equity requires.

Sec. 33. Exceptions. R. S. c. 81, § 34. Either party may allege exceptions to any ruling or decree of such justice; and they shall be allowed unless deemed frivolous.

Sec. 34. Not performing decree, committed for contempt. R. S. c. 81, § 35. If the attorney does not perform the decree of such justice, he shall

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be committed for contempt until he does, or is otherwise lawfully discharged; and his name shall be struck from the roll of attorneys.

Sec. 35. Claimant may sue at common law; debtor shall not cite to disclose until in jail ninety days. R. S. c. 81, § 36. The claimant may have his suit at common law against such attorney before filing such motion, or after an adverse decision thereon; and if judgment is recovered against the attorney in either mode, the fact shall be noted on the margin of the execution issued thereon; and when the debtor is arrested thereon, he shall be committed to jail, and no citation to disclose shall be issued until he has been there for ninety days.

Removal of Unworthy Attorneys.

Sec. 36. Information may be filed by attorney-general or committee of bar against attorney. R. S. c. 81, § 37. 1909, c. 53. Whenever an information is filed in the clerk's office of the supreme judicial court in any county, by the attorney-general, or by a committee of the bar or bar association of such county, charging that an attorney at law has become and is disqualified for the office of attorney and counselor at law, for reasons specified in the information, any justice of said court, in term time or in vacation, may, in the name of the state, issue a rule requiring the attorney informed against, to appear on a day fixed, to show cause why his name should not be struck from the roll of attorneys, which rule, with an attested copy of the information, shall be served upon such attorney in such manner as the justice directs, at least fourteen days before the return day, and shall be made returnable, either in the county where such attorney resides or where it is charged that the misconduct was committed.

64 Me. 146.

Sec. 37. Upon denial, information shall stand for hearing. R. S. c. 81, § 38. If the attorney on whom such service has been made, on or before said return day, files in the clerk's office of said court in said county of return, a denial of the charges specified in the information, the information shall thereupon stand upon the docket of said court, for hearing at the next term thereof in said county, by the justice presiding, upon such lawful evidence as may be produced either by the state or by the respondent.

Sec. 38. Proceedings in case of default, or upon hearing. R. S. c. 81, § 39. If such attorney fails to file his denial as aforesaid, the facts set forth in the information shall be taken as confessed, and if the justice presiding finds that the facts so confessed are sufficient to disqualify the respondent from holding the office of attorney and counselor at law, or if, in case of denial, the justice upon hearing finds that any of the charges specified are true and that the acts proved are sufficient to disqualify the respondent as aforesaid, he shall give judgment accordingly, and shall enter a decree that the respondent be removed from the office of attorney and counselor at law in all the courts of the state and that his name be struck from the roll of attorneys.

64 Me. 145.

Sec. 39. Judgment is final unless appealed from. R. S. c. 81, § 40. The judgment of such justice shall be final unless the respondent within one

week, and before the adjournment of said term, files his appeal therefrom to the law court by entering his claim therefor upon the docket.

Sec. 40. Appeal. R. S. c. 81, § 41. Such appeal shall be heard upon printed copies of the case furnished by the respondent at the next law term. If the case is not argued, it shall be decided upon the record, and if the respondent fails to enter his appeal with the printed copies of the case during the first three days of said law term, the counsel for the prosecution shall enter the appeal with an attested copy of the judgment and decree, whereupon the same shall be affirmed by the law court.

See c. 82, § 59.

Sec. 41. Conduct of prosecution. R. S. c. 81, § 42. The prosecution shall be conducted by the county attorney for the county where the rule is returnable, unless the justice issuing the rule appoints some other suitable counsel to perform said duty. Compulsory process shall issue to compel the attendance of witnesses, and in case of decree of removal, judgment shall be rendered in behalf of the state against the respondent for full costs to be taxed by the court.

Sec. 42. Construction of foregoing. R. S. c. 81, § 43. The six preceding sections do not annul or restrict any authority hitherto possessed or exercised by the courts over attorneys.

Sec. 43. Penalty for falsely advertising or representing himself to be an attorney or counselor. R. S. c. 81, § 44. If any person who has not been admitted to practice law in this state, or whose name has been struck from the roll of attorneys, advertises as, or represents himself to be an attorney or counselor at law, he shall be fined not exceeding five hundred dollars, or imprisoned not more than three months.

Sec. 44. Management of causes by parties or counsel. R. S. c. 81, § 45. Parties may plead and manage their own causes in court or do so by the aid of such counsel, not exceeding two on a side, as they see fit to employ; or by any citizen of good moral character who produces in court a letter of attorney for that purpose; but no person whose name has been struck from the roll of attorneys for misconduct shall plead or manage causes in court under a power of attorney for any other party, or be eligible for appointment as a trial justice, or justice of the peace.

33 Me. 358; 36 Me. 339; 72 Me. 411.