

MAINE STATE LEGISLATURE

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EIGHTH REVISION

THE
REVISED STATUTES

OF THE
STATE OF MAINE

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VOLUME I



By the Authority of the Legislature

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term of office, all the official duties of the reporter shall cease, and he shall turn over and deliver to his successor all unpublished cases in his hands, and shall also assign and transfer to his successor any contract and bond he then may have relating to a volume not then completed or commenced. Such successor's rights in and under such contract and bond shall be the same as though he had originally made the contract and taken the bond.

Sec. 4. To furnish advance sheets free to all justices. R. S. c. 91, § 96. The reporter shall furnish free of charge the justices of the supreme judicial court and superior court with 1 copy each of advance sheets; he shall also be entitled to 25 copies, free of expense, for current exchanges with the reporters of other states, law school libraries, the attorney-general, and heads of departments.

CHAPTER 93.

BOARD OF BAR EXAMINERS. ATTORNEYS AT LAW.

- Sections 1-8 Admission to Practice Law.
Sections 9-13 Summary Proceedings for Payment of Collections.
Sections 14-23 Removal of Unworthy Attorneys, and Resignation of Attorneys.

Admission to Practice Law

Sec. 1. Appointment of board for examination of applicants; tenure; compensation; meetings. R. S. c. 93, § 27; c. 125, §§ 53, 55, 56. 1931, c. 216, Art. II, § 15. 1941, c. 46, § 3. 1943, c. 320. The board of examiners for the examination of applicants for admission to the bar, as heretofore established, and hereafter in this chapter called the "board", shall be composed of 5 competent lawyers of the state; 1 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 5 years beginning on the 1st 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 2 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. The members of the 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.

The secretary of the board shall be the treasurer thereof and shall receive all fees, charges, and assessments payable to the board, and account for and pay over the same according to law.

The members of the board shall each receive as compensation for their services \$10 a day for the time actually spent and their necessary expenses incurred in the discharge of their duties, to be certified by the secretary of the board.

See c. 14, §§ 2-4, re bond of treasurer; c. 15, § 27, re fees, fund for payment of expenses of board, etc.

Sec. 2. Attorneys, residents of other states or foreign countries, may be admitted to practice in courts of this state after being a bona fide resident of this state for the 6 months last past; fee. R. S. c. 93, § 25. 1931, c. 176, § 1. 1937, c. 25, § 1. 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, who has been a member of the bar of another state or the District of Columbia, in good standing and in active practice, for at least 3 years and has been a bona fide resident of this state for the 6 months last past, 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 or of the District of Columbia, and also a certificate of good moral character and of fitness to practice law from the board, 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.

Any such applicant, when making application for such certificate of good moral character and of fitness to practice law, shall pay to the board a fee of \$50, all or any part of which may be used by said board to defray the expense of investigation of such applicant.

No person shall be admitted as an attorney upon motion, without the certificate of qualification mentioned in section 1 from the board, until he has paid to the treasurer of the county where he is admitted, \$20, and produced a receipt therefor to the court.

Sec. 3. Qualifications necessary to be admitted to practice law. R. S. c. 93, § 26. 1931, c. 176, § 2. Every other person who shall be of full age, a resident of this state 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 provided for in this chapter from the board, 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 counselor in chancery, in this state until he shall be licensed to do so by said courts. No person shall be denied admission or license to practice as an attorney at law on account of sex.

Sec. 4. Further qualifications; mode of examination; fee; grade of standing. R. S. c. 93, § 28. 1931, c. 176, § 3. 1937, c. 25, § 2. Each applicant before taking examination for admission to the bar of this state shall produce to said board satisfactory evidence of good moral character and of having received a preliminary education sufficient to entitle him to admission as a member in good standing of the third year class of Bates College, Bowdoin College, Colby Col-

lege, or the University of Maine, or any other college or university approved by said board, as a candidate for the degree of Bachelor of Arts, Science, Education, or Business Administration. Such preliminary education shall be proved by a certificate of the satisfactory completion of 2 years' work as a candidate for such degree at one or more of such colleges or universities or by a certificate of admission as a candidate for such degree to the third year class of any such college or university. Any applicant may register with said board at any time by filing with said board a certificate stating his name, address, age, and the date on which the study of law is commenced, and at the same time may submit to the board the proof of preliminary education, which proof shall be at once acted upon by the board and the result of such action communicated to the applicant.

In addition to the foregoing requirements, each applicant shall produce to the said board satisfactory evidence of having pursued the study of law in the office of some attorney or in some law school approved by said board for at least 3 years prior to examination and that he has been a bona fide resident of the state for the 6 months last past. When an applicant shall have satisfied said board that all the foregoing requirements have been fulfilled, said applicant shall pay a fee to be fixed by said board of not more than \$20 and shall then be required to submit to a written examination which shall be prepared by said board, also an oral examination by said board, if deemed necessary, and shall be required to answer correctly a minimum of 70% of the questions asked to entitle said applicant to the certificate of qualification mentioned in section 1. The board shall, however, have power to establish such higher grades of standing as to them may seem proper.

Sec. 5. Examination papers to be kept on file; limitation on number of examinations. R. S. c. 93, § 29. 1937, c. 25, § 3. The examination papers shall be kept on file in the office of the secretary of the board for a period of 1 year, after which time the same may be destroyed, 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 of qualification is issued or not. Any applicant failing to pass the first examination may again apply after 6 months by showing to the board that he has diligently pursued the study of the law 6 months prior to the examination; if such second application is within 1 year after his first examination, he shall not be required to pay an extra fee for the second examination.

Any applicant who fails in 2 examinations shall pay a fee for each succeeding examination, and shall not be allowed to take any examination within 11 months after his last previous failure. No applicant may take any examination after his fourth failure except by special permission of the board and for good cause shown. A decision of said board refusing such permission may be reviewed by any justice of the supreme judicial court upon petition by the applicant for such review filed with the clerk of the judicial courts in and for the county of Cumberland or the county of Penobscot within 90 days after the giving of written notice in hand or by mail, postage prepaid, by any member of said board to the applicant of the board's decision. The applicant shall cause notice of the time and place of hearing upon such petition for review, together with a copy of such petition, to be served upon the secretary of said board at least 60 days before the date of such hearing.

Sec. 6. Attorney's oath. R. S. c. 93, § 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 the constitution of this state, 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 as to the courts, as to your clients. So help you God."

See c. 122, § 18, re corrupt agreements; *64 Me. 145, 150.

Sec. 7. Persons not admitted forbidden to practice law; cannot recover pay for services; penalty and procedure. R. S. c. 93, § 31. 1931, c. 176, § 4. 1937, c. 142. 1939, c. 67. Unless duly admitted to the bar of this state, no person shall practice law, or any branch thereof, or hold himself out to practice law, or any branch thereof, within the state or before any court therein, or demand or receive any remuneration for such services rendered in this state. Whoever not being duly admitted to the bar of this state shall practice law, or any branch thereof, or hold himself out to practice law, or any branch thereof, within the state or before any court therein, or demand or receive any remuneration for such services rendered in this state, shall be punished by a fine of not more than \$500, or by imprisonment for not more than 3 months, or by both such fine and imprisonment. The word "person" as used herein shall include a body corporate. This section shall not be construed to apply to practice before any federal court by any person duly admitted to practice therein nor to a person pleading or managing his own cause in court. The supreme judicial court and the superior court shall have concurrent jurisdiction in equity, upon petition of three or more members of any bar association within the state, or of the attorney-general, to restrain violations of the provisions of this section. In all proceedings under the provisions of this section, the fact, as shown by the records of the clerk of courts in the county in which a person resides, that such person is not recorded as a member of the bar in such county shall be prima facie evidence that he is not a member of the bar licensed to practice law in the state. The supreme judicial court, or any justice thereof, in term time or vacation, shall have the power to issue a rule requiring any person alleged to have violated any of the provisions of this section to appear on a day fixed, and show cause why he should not be adjudged in contempt, and abide the order of such court or justice in the premises, which order shall be served by a copy in hand at least 5 days before the return day. In the event that such court or justice finds said person guilty of violating any of the provisions of this section, the person so adjudged shall be punished by a fine of not more than \$500, or by imprisonment for not more than 3 months, or by both such fine and imprisonment. This power vesting authority in the supreme court, or any member thereof, to punish for contempt is not to supersede any of the other provisions of this section, but is in addition to any other remedy provided herein.

63 Me. 183.

Sec. 8. Penalty for simulating legal papers. 1941, c. 88. No person shall send, deliver, mail, or in any manner cause to be sent, delivered, or mailed to

any person, firm, or corporation any paper or document simulating or intended to simulate a summons, complaint, writ, or court process of any kind. Any person violating the provisions of this section shall be punished by a fine of not more than \$100.

Summary Proceedings for Payment of Collections

Sec. 9. Summary proceedings against attorney failing to pay money collected. R. S. c. 93, § 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 10 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 superior court in the county where such attorney resides, a motion in writing, under oath, setting forth the facts; and thereupon any justice of the superior 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 5 days before the return day.

113 Me. 457.

Sec. 10. Procedure. R. S. c. 93, § 33. If such attorney 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. 11. Exceptions. R. S. c. 93, § 34. Either party may allege exceptions to any ruling or decree of such justice; and they shall be allowed unless deemed frivolous.

Sec. 12. Not performing decree, committed for contempt. R. S. c. 93, § 35. If the attorney does not perform the decree of such justice, he shall be committed for contempt until he does or is otherwise lawfully discharged; and his name shall be struck from the roll of attorneys.

Sec. 13. Claimant may sue at common law; debtor not to cite to disclose until in jail 90 days. R. S. c. 93, § 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 90 days.

Removal of Unworthy Attorneys, and Resignation of Attorneys

Sec. 14. Information may be filed by attorney-general, or committee of bar against attorney. R. S. c. 93, § 37. 1931, c. 16. Whenever an information is filed in the office of the clerk of courts in any county, by the attorney-general, or by a committee of the state bar association, 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 the supreme judicial court 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 14 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. 15. Upon denial, information to stand for hearing. R. S. c. 93, § 38. If the attorney on whom such service has been made, on or before said return day, files in the office of the clerk of courts in said county of return a denial of the charges specified in the information, the information shall thereupon stand upon the docket for hearing at such time and place as said justice shall order, upon such lawful evidence as may be produced either by the state or by the respondent.

Sec. 16. Proceedings in case of default, or upon hearing. R. S. c. 93, § 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 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. 17. Judgment is final, unless appealed from. R. S. c. 93, § 40. The judgment of such justice shall be final unless the respondent within 1 week files his appeal therefrom to the law court by entering his claim therefor upon the docket.

Sec. 18. Appeal. R. S. c. 93, § 41. The 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 3 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. 91, § 19, re copies in law cases may be printed or written.

Sec. 19. Conduct of prosecution. R. S. c. 93, § 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. 20. Interpretation of §§ 14-19. R. S. c. 93, § 43. The provisions of the 6 preceding sections do not annul or restrict any authority hitherto possessed or exercised by the courts over attorneys.

Sec. 21. Provision for resignation of attorneys. 1939, c. 54. 1941, c. 33. Any member of the bar of this state may resign from the office of attorney and counselor at law by submitting his resignation to any justice of the supreme judicial court who may or may not, in his discretion, in the name of the state of Maine accept such resignation and order that such attorney's name be stricken

from the roll of attorneys of the state. No person whose resignation from his office of attorney and counselor at law has been accepted by a justice of the supreme judicial court, as aforesaid, shall be readmitted to the practice of law in any of the courts of the state or entitled to practice law within said state unless and until he shall have been reinstated as an attorney and counselor at law by a justice of the supreme judicial court. The procedure for such reinstatement shall be the same as in the case of attorneys who have been disbarred.

Sec. 22. Penalty for falsely advertising or representing himself to be an attorney or counselor. R. S. c. 93, § 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 punished by a fine of not more than \$500, or by imprisonment for not more than 3 months.

Sec. 23. Management of causes by parties or counsel. R. S. c. 93, § 45-1931, c. 176, § 5. Parties may plead and manage their own causes in court or do so by the aid of such counsel, not exceeding 2 on a side, as they see fit to employ; 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.

CHAPTER 94.

SUPERIOR COURT.

See c. 16, § 3; 1931, c. 216, Art. I, § 1.

Sections 1-20 Superior Court; Constitution, General Jurisdiction, and Powers.

Sections 21-24 Naturalization and Citizenship.

Superior Court; Constitution, General Jurisdiction, and Powers

Sec. 1. Constitution of the court. R. S. c. 91, § 14. The superior court, as heretofore established, shall consist of 7 justices, and such active retired justices as may be appointed and serving on said court, learned in the law and of sobriety of manners. The chief justice of the supreme judicial court shall assign the justices of the superior court to hold the trial terms of said court. Whenever in the opinion of the chief justice of the supreme judicial court it becomes necessary, he may designate a justice of the supreme judicial court or any active retired justice of the supreme judicial court or of the superior court to hold a term of said superior court or may designate any of such justices or a justice of the superior court to hold one or more sessions thereof separate from the session presided over by the justice holding the regular trial term.

See Const. of Me., Art. V, Part 1, § 8, re appointment; Const. of Me., Art. VI, § 4, re term of office; c. 91, § 2, re appointment of additional judges; c. 92, § 4, re reporter of decisions to furnish advance sheets; 129 Me. 474.