

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 676

H. P. 599

House of Representatives, February 5, 1981

Referred to the Committee on Judiciary. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Dillenback of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Provide Statutory Procedures for Grievances Against Attorneys.

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

4 MRSA c. 18 is enacted to read:

CHAPTER 18

ATTORNEY GRIEVANCE BOARD

§ 931. Appointment; terms

The Attorney Grievance Board, in this chapter called the board, is established and shall administer this chapter. The board shall consist of 7 persons, 2 persons who are attorneys appointed by the Attorney General and 4 persons who are members of the public appointed by the Governor. The board members appointed by the Attorney General and the Governor shall serve for a term of 3 years and until their successors are appointed and qualified, except that initial appointments by the Attorney General and the Governor shall be for one, 2 and 3 years respectively.

The board members appointed by the Attorney General and the Governor shall, by an affirmative vote of at least 5 members, elect a 7th member who shall act as chairman and who shall serve a term of 3 years and shall then be subject to reelection or selection of a new chairman.

No board member nor the chairman may serve more than 2 full terms.

§ 932. Removal; vacancies

The appropriate appointing authority may remove any board member for misconduct, incompetency, neglect of duty or for any other sufficient cause.

The appropriate appointing authority shall appoint members to vacancies on the board as they shall occur or upon expiration of terms. Any vacancy shall be filled for the unexpired portion of the term of the board member who creates the vacancy.

§ 933. Qualifications

The members of the board must be residents of this State. No person appointed as a public member nor any member of that person's immediate family may derive any portion of their income from the practice of law.

§ 934. Compensation; expenses

The members of the board shall receive compensation at the rate of \$75 a day for each day spent attending board meetings or board hearings. In addition, the members of the board shall be reimbursed for all necessary expenses, including expenses for travel, that they may incur through service as board members. Reimbursement for expenses shall be provided at the same rate as authorized for state employees.

§ 935. Employees

The board may employ, subject to the Personnel Law, such clerical and investigator assistance as may be necessary to carry out its duties.

§ 936. Annual report

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

§ 937. Authority

1. **Complaints.** The board shall have authority to investigate complaints against attorneys filed by any member of the public alleging violation of a statute, or violation of a professional responsibility or trust. Written complaints received by the board shall be retained as confidential unless the board chooses to make the complaint public.

2. **Review and investigation.** The board shall conduct such review and investigation of each complaint received as it deems appropriate and shall advise the complaining party, in writing, of its determination with regard to the complaint. Copies of that written notification shall be provided to the Attorney General.

3. **Response by attorney or attorneys.** When a complaint is received, the

attorney or attorneys named in the complaint shall be promptly notified by the board of receipt of the complaint. In addition, the board shall request that the attorney or attorneys named in the complaint provide a response to the complaint, if they so desire, within 15 days of transmission of the complaint to them by the board.

4. Notice of meeting. The complaining party and the attorney or attorneys named in the complaint shall be notified, and have the right to be present at any meeting of the board at which the complaint is to be discussed.

§ 938. Hearings

The board may conduct public hearings where it deems necessary in support of its investigative and fact-finding activities. When a hearing is to be held, the complaining party and the attorney or attorneys named in the complaint shall be notified of the hearing by certified mail at least 2 weeks in advance of the date scheduled for the hearing. Copies of the notification of the hearing shall also be transmitted to the Attorney General and the Chief Justice of the Supreme Judicial Court.

§ 939. Hearing procedures

1. Cross examination. At any hearing, the board, the complaining party and the attorney who is subject of the complaint may present such witnesses and documentary evidence as they deem appropriate and may cross-examine. The Attorney General may appear at the hearing, present witnesses and evidence and cross-examine if he so desires.

2. Witnesses sworn; testimony transcribed. All witnesses shall be sworn, and all testimony shall be recorded in a manner which allows it to be transcribed if necessary.

3. Witnesses. The board may sequester the witnesses as it deems necessary.

4. Findings and opinions of the board. During hearings, the board is not bound by the strict rules of evidence, but any findings and opinions of the board must be based upon competent and substantial evidence.

5. Hearings. Hearings before the board shall be public and the record of the hearings before the board shall be available for public inspection, provided that the board, by an affirmative vote, may order that all or any portion of the hearing may be closed to the public and that all or any portion of the hearing record shall not be available for public inspection. When the board votes that all or any portion of a hearing shall be closed to the public or that all or any portion of the hearing record shall not be available for public inspection, the reasons for the board's action shall be specified in writing.

§ 940. Subpoena power

The board may, through its chairman or any other member, administer oaths, subpoena witnesses and compel the production of books, records, papers,

documents, correspondence and other material and records which the board deems relevant to the proceedings before it.

§ 941. Decisions

1. Findings; Attorney General to take action. When a hearing has been held upon a complaint alleging violation of a statute or violation of a professional responsibility or trust, the board shall issue findings of fact and conclusions and recommendations of appropriate action, if any, to be taken against an attorney. These findings shall be transmitted to the Attorney General and he shall, within 30 days of receipt of the findings, take such action upon them as he deems appropriate. A copy of these findings, conclusions and recommendations shall also be transmitted to the Chief Justice of the Supreme Judicial Court.

§ 942. Attorney General authority not limited

Nothing in this chapter may be interpreted to limit the independent authority of the Attorney General to bring matters relating to the conduct of attorneys to the attention of the Supreme Judicial Court on his own motion.

§ 943. Registration fee

Every attorney admitted to practice in the State shall pay an annual registration fee of \$75, except that for the first 2 years after admission a fee of \$50 is required. Fees generated under this section shall be placed in a nonlapsing account to carry out the purposes of this chapter.

STATEMENT OF FACT

The purpose of this bill is to establish a mechanism for the processing of grievance complaints against attorneys in a manner which provides assurance that grievances will be considered by an impartial body and that members of the public filing grievances shall receive a response which addresses their concerns. This procedure is intended to replace the Board of Overseers of the Bar.