

STATE OF MAINE
SUPREME JUDICIAL COURT
AMENDMENTS TO THE MAINE BAR RULES

2008 Me. Rules 05

Effective: January 1, 2008

All of the Justices concurring therein, the following amendments to the Maine Bar Rules are hereby adopted to be effective on January 1, 2008, as follows:

The specific rules amendments are set forth below. To aid in understanding of the amendments, an Advisory Note states the reason for recommending each amendment, but it is not part of the amendment adopted by the Court.

1. Section 4(d)(22) of the Maine Bar Rules is amended to read as follows:

(22) shall, subject to the Court's approval, adopt ~~and conform to~~ personnel and financial policies and procedures, including accounting controls, purchasing, expense vouchering, and capital equipment inventories ~~consistent with those used by the Judicial Department;~~

Advisory Note

The proposed amendment deletes language requiring the Board of Overseers of the Bar to conform to policies and procedures adopted by the Maine Judicial Department. In doing so, the Court recognizes that the Board, although created and governed by the Court, is not under the direct administration of the Court and the Board employees are not affiliated with any of the Court's bargaining units. Consequently, all Board policies and procedures, subject to the Court's approval, are independently created and administered by the Board.

2. Section 5(d) of the Maine Bar Rules is amended to read as follows:

(d) Records. Bar Counsel shall permanently retain all orders, reports and letters imposing any sanction against an attorney and all reports on decisions issued after any disciplinary hearing, as well as relating to a docketed Grievance Commission matter, all fee awards and dismissal orders in matters docketed with the Fee Arbitration Commission, and all petitions, orders, decisions or reports concerning petitions for reinstatement. Initial complaints shall be retained for 10 years from the final disposition date in all disbarment, suspension or resignation matters, and for 6 years from the final disposition date in all other grievance complaints heard or reviewed that resulted in any other disposition except dismissal. Petitions for fee disputes that proceed to hearing with an award being issued by the Fee Arbitration Commission shall be retained for 6 years from the date of the award. After ~~two~~ 2 years from the final disposition date, Bar Counsel shall expunge all file documents or other evidence of the existence of grievance complaints dismissed pursuant to either Rule 7.1(c), ~~or~~ 7.1(d)(3), 7.1(e)(3)(A), 7.2(b)(5) or fee petitions dismissed pursuant to Rule 9. Such expungement of records shall also occur ~~one~~ 1 year after the date of the death of an attorney having any record of grievance complaints. Notwithstanding any required expungement of documents, the Board shall permanently maintain a summary of all docketed

complaint matters processed by Bar Counsel containing the name of the complainant and respondent-attorney, the disposition, and the respective dates the matter was opened and closed. After a complaint file has been so expunged, any Board response to an inquiry from the complainant or respondent will be that the file contents have been expunged and only non-substantive docketing and disposition information has been retained; any Board response to any other inquiry requiring a reference to about the matter shall state that there is no public record of such matter.

Advisory Note

This amendment confirms that the results of all disciplinary matters that proceed to hearing are to be retained by the Board, including dismissals. There is educational benefit for the Board and the bar to have access to fact-finders' conclusions that certain conduct was found not to be in violation of the Code of Professional Responsibility. This amendment also clarifies that all fee arbitration cases resulting in a dismissal shall be expunged 2 years after the final date of disposition. The last sentence is amended to clarify that the Board should respond to complainants or respondents in a different manner than to the general public concerning expunged grievance complaints.

3. Section 6(a)(1) of the Maine Bar Rules is amended to read as follows:

(1) *Registration Statement.* Every attorney admitted to practice in this State, except attorneys who have notified the Board that they are members of the armed forces of the United States who are on active duty outside of the state of Maine,

shall upon admission and each year thereafter, file with the Board a registration statement setting forth the attorney's current residence and office addresses, Social Security or federal identification number, and such other identifying information as the State Tax Assessor may by rule require; the date of the attorney's admission to the Bar of the Court; the facts concerning the attorney's admission to practice in any other jurisdiction including each federal court and administrative body where admitted; and such other information as the Court or the Board may direct. ~~However, any admitted attorney serving as a judicial law clerk shall not be required to so register under this Rule until after completion of that clerkship and the subsequent assumption of either active practice, or inactive status under section e(1) of this Rule.~~ The statement shall disclose whether the attorney is in good standing in each jurisdiction to which admitted and, if the attorney is not in good standing in any jurisdiction, it shall contain an explanation of the circumstances. In addition to such registration statement, every attorney shall file a supplemental statement of any change in the information previously submitted within 30 days of such change. Within 30 days of the receipt of a registration statement or supplement thereto filed by an attorney, the Board shall acknowledge receipt thereof in order to enable the attorney on request to demonstrate compliance with the requirement of this rule. Registration statements shall be filed and payment of requisite fees imposed by Rule 10 shall be made on or before August 31 by every

attorney admitted to practice in this state except that if the following July is fewer than four months from the date of admission, the next filing shall be the second July following the date of admission. With the registration statement every attorney admitted to practice in this state shall submit a signed written report documenting compliance with the continuing legal education requirements of Rule 12(a) and by providing the information Annual Report statement required by Rule 12(b)(1). Registration statements, Annual Report statements, and payments postmarked after August 31 will be considered late causing a \$ 25.00 surcharge per statement to be assessed upon and payable by the attorney. ~~With the registration statement every attorney admitted to practice in this State shall submit a signed written report documenting compliance with the continuing legal education requirements of Rule 12(a) and providing the information required by Rule 12(b)(1).~~

Justices of the Maine Supreme Judicial Court, Justices of the Maine Superior Court, Judges of the Maine District Court, ~~and~~ Maine Family Law Magistrates, Judges and Magistrates of the United States District Court of Maine, Maine Judges of the United States Court of Appeals for the First Circuit, and Judges of the United States Bankruptcy Court District of Maine shall not be required to file a registration statement or pay an annual fee during their tenure in office, but they shall remain on the roll of attorneys in judicial status, and may retire in judicial

status or resume active practice upon completion of their tenure in office by filing a registration statement and paying the annual fee required for the year in which active practice is resumed.

Advisory Note

This amendment to Bar Rule 6(a)(1) addresses the following:

1. Exempts attorneys who notify the Board that they are members of the armed forces of the United States and are on active duty outside of the State of Maine from filing the annual registration statement. This amendment mirrors Maine Bar Rule 12(A)(5)(D) which exempts these attorneys from the requirements of Maine Bar Rule 12.
 2. Deletes language that exempts judicial law clerks from registering with the Board until the assumption of either active practice or inactive status. In doing so, the Board will annually receive updates from these attorneys as to their current contact information and employment status. See proposed amendment Maine Bar Rule 10(a) which exempts judicial law clerks from paying an annual registration fee.
 3. Clarifies that attorneys must sign and return the Annual Report statement required by Maine Bar Rule 12(b)(1).
 4. Assesses a \$25.00 surcharge on attorneys who fail to return the Annual Report statement required by Maine Bar Rule 12(b)(1).
 5. Clarifies who qualifies for judicial status.
4. Section 6(e) of the Maine Bar Rules is amended to read as follows:

(e) Register of Attorneys. Based upon the information made available to the Board by the filing of the statements provided for under this rule, or otherwise, and upon such other investigatory procedures as may be established by the Board,

consistent with these rules, the Board shall compile and keep current a register for the Court of all persons admitted as members of the Bar of this state, and records of the death or other termination or suspension of the right of any attorney to practice law in this state. The Board shall assign a Bar Number to every admitted attorney. When attorneys change their business or home contact information, the updated information must be supplied by the attorney within 30 days to the Board and to the Office of Information Technology of the Administrative Office of the Courts. An attorney's social security number shall not be made available by the Board to the public. ~~All other information contained in such register and records shall be available to the public upon such terms as shall be reasonably necessary to support the costs of disseminating it and at such times as shall be reasonably convenient to the operating procedures of the Board.~~ For the protection of the public, the Board's records must contain an address, which may be a post office box address, for every attorney, which address shall be made available to the public. The Board will only disclose an attorney's home address if no current office address or post office box address is provided. All other information contained in such register and records shall be available to the public subject to Board Regulations and policies.

Advisory Note

This amendment requires the Board to assign a Bar Number to every admitted attorney. To ensure that both the Board of Overseers and the Judicial Branch receive timely notification of address changes, this amendment also requires members of the Bar to provide updated contact information within 30 days to the Board and the Administrative Office of the Courts. This amendment conforms the language of this Rule to the language used in the registration statement regarding the circumstances under which the Board will disclose an attorney's home address.

5. Section 7.3(f) of the Maine Bar Rules is abrogated and replaced to read as follows:

(f) Appointment of a Proxy to Protect Clients' Interests When Attorney Is Disabled, Missing or Deceased.

(1) Whenever an attorney is disabled, missing or deceased, and no associated lawyer (see M. Bar R. 3.15(a)) or lawyer designated in the disabled missing or deceased attorney's annual registration statement under M. Bar R. 6(a)(1) is available to act to protect the interests of clients and conclude the law practice, the Court may appoint a Proxy who is a licensed Maine attorney in good standing with the duties described in this Rule. A Proxy shall be authorized by Court order to take some or all of the following actions:

- (i) Secure the professional files, client data and client property in an appropriate location and notify the Board of Overseers of that location;
- (ii) Create an inventory of the open and closed client files;
- (iii) Give priority attention to client matters that are identified as open, active and apparently time sensitive, including notifying clients of the need to seek new counsel or to represent themselves; if necessary the Proxy may seek protection for certain clients by giving notice to tribunals or others concerning the circumstances giving rise to the Proxyship, without entering an appearance for the client.
- (iv) Notify all clients that the law practice is concluding and invite clients to retrieve their client files. Such notice may be by letter, phone, email, newspaper advertisement in a newspaper in general circulation in the county where the law practice was located and/or such other method as will effect notice. Notice to clients with open matters should be made by as direct means as possible;
- (v) Guide the personal representative or conservator of the deceased, missing or disabled attorney in prudently utilizing the operating accounts to effect the conclusion of the practice, including the

temporary retention of office staff or hiring other personnel as necessary and appropriate;

(vi) Guide the personal representative or conservator of the deceased, missing or disabled attorney in the appropriate distribution of client funds and property held in trust;

(vii) Submit to the Court a record of hours worked and disbursements made to allow in some cases for payment of legal fees at the State court appointment rate. The assets or estate of the deceased, missing or incapacitated attorney shall be the first choice for source of payment to the Proxy. A Proxy may serve in a pro bono capacity. Otherwise, a Proxy may be compensated from another source ordered by the Court.

(viii) Continue to act as Proxy until discharged by the Court in accordance with paragraph 3 of this Rule;

(ix) Take any and all other appropriate action consistent with the discretion vested in the Proxy by the Court and/ or as specifically ordered by the Court.

(2) Prior to petition for discharge, the Proxy shall formulate for the approval of the Court a plan for the custody, care, appropriate release and ultimate destruction of client files. The plan will identify a file caretaker (who may be the

Proxy) who will maintain and appropriately release the client files to clients subsequent to the discharge of the Proxy. The plan must provide for confidential destruction of all client files and data, regardless of content, eight (8) years from the date of the discharge of the Proxy. The destruction date may be earlier if so ordered by the Court. The plan must include the requirement that the file caretaker provide written notice to the Board of Overseers confirming the confidential destruction of files and data immediately after it has occurred.

(3) The Proxy shall serve until discharged by the Court. The Proxy may petition the Court for discharge from appointment upon completion of duties or sooner for other good cause. With the petition for discharge the Proxy shall file a report of services rendered. With the approval of the court, the report or any part thereof may be filed under seal. The report should include:

- (i) The inventory of files and the status of each file as released or retained;
- (ii) The plan for the security and handling of the retained client files;
- (iii) An accounting from the personal representative or conservator of the law practice operating accounts during the period of Proxyship;

- (iv) An accounting from the personal representative or conservator of the law practice client trust fund accounts during the period of Proxyship; and
- (v) Any other information deemed by the Proxy or the Court to be necessary and appropriate;

(4) Any Proxy so appointed shall not disclose any information contained in any file listed in such inventory without the consent of the client to whom such file relates except as may be necessary to carry out an order of court including any order under this Rule. Any Proxy may be engaged by any former client of the deceased, missing or disabled attorney, provided that the Proxy informs any such client in writing that the client is free to choose to employ any attorney, and that the Court's appointment order under section (2) of this Rule does not mandate or recommend employment by the client of the Proxy. The Proxy is subject to all Bar Rules, including Bar Rule 3.4 on conflicts of interest. However the client's retention of the Proxy as successor counsel is not a per se conflict of interest solely by reason of the Proxy's appointment under this Rule.

5. The Proxy shall be protected from liability for professional services rendered in accordance with this Rule to the extent permitted by law.

6. In every case, the Proxy shall provide copies of all pleadings and orders under this Rule to the Board of Overseers of the Bar.

Advisory Note

[No advisory note was provided to support this replacement of M. Bar R. 7(f) proposed by the Board of Overseers of the Bar.]

6. Section Rule 7.3(i)(2) of the Maine Bar Rules is abrogated and replaced to read as follows:

(2) Action by Attorneys Suspended for Failure to Register, to Pay the Annual Fee, to Satisfy Mandatory CLE Requirements, or by Attorneys Who Assume Inactive Status.

(A) An attorney who has been suspended for failing to file a registration statement under Rule 6 of the Maine Bar Rules, for failure to satisfy the mandatory CLE requirements imposed by Rule 12, or an attorney who assumes inactive status under Rule 6(c) shall:

(i) not accept any new retainer or engage as attorney for another in any new case or legal matter of any nature;

(ii) notify each client (meaning those with whom the attorney then has open engagements) of the attorney's suspension or assumption of inactive status

and the consequent inability to act as an attorney after the effective date of the suspension or assumption of inactive status;

(iii) notify each client who the attorney is advising or representing in pending litigation or administrative proceedings, and the attorney or attorneys or other representative for each other party in such matter or proceeding, of the attorney's suspension and consequent inability to act as an attorney after the effective date of the suspension or assumption of inactive status;

(iv) advise each client promptly to substitute another attorney or attorneys or to seek legal advice elsewhere;

(v) notify each court or federal, state or local administrative agency or private arbitration, mediation or alternative dispute resolution forum in which the attorney appears for any party of the attorney's suspension and consequent inability to act as an attorney after the effective date of the suspension or assumption of inactive status; and any notice of the suspension or assumption of inactive status given to a court, administrative agency or private dispute resolution forum shall state the place of residence of the client of the attorney, and shall identify the particular proceeding by docket number as well as by names of parties, with copies of the notice sent to each party to the proceeding, and

(iv) give such other notice of the Court's action as the Court may direct in the public interest.

(B) Within 30 days of the effective date of the suspension or when filing the notice of the attorney's desire to assume inactive status, any the attorney shall file with the Clerk and also with the Board an affidavit attesting compliance with the provisions of the preceding paragraph (A). The affidavit shall include a list of the names and addresses of all clients, attorneys, courts, administrative agencies and private dispute resolution forums to whom notice was sent as required by the rules, together with a copy of the text of the notices sent. If an attorney has no clients or attorneys to notify, a statement to that effect shall be included in the affidavit.

(C) Whenever the Court deems it necessary, it may appoint an attorney admitted to the Bar of this State to take appropriate action in lieu of, or in addition to, the action directed in subparagraphs (A) and (B) above.

(D) The Board shall promptly transmit notice of the suspension or of the assumption of inactive status to the Clerk of each court and to each administrative body, state or federal, in which it has reason to believe the attorney has been admitted to practice.

Advisory Note

This amendment reorganizes the notice and other action requirements of Rule 7.3(i)(2). It adds a requirement relative to notice of private arbitration, mediation or alternative dispute resolution forums before which the attorney is representing clients. It also eliminates the 20 day time period allowed for the filing of an affidavit for attorneys, who have not been suspended and are seeking inactive status. The amendment requires attorneys to immediately file an affidavit when seeking inactive status which attests to the fact that all active clients and courts have been notified that the attorney intends to assume inactive status and comply with the provisions of Rule 7.3(i)(2)(B). The Board of Overseers reports that attorneys historically fail to provide the affidavit in the time allotted. The amendment also clarifies that all attorney who are disbarred or suspended, attorneys who resign under Rule 7.3(g), or attorneys who assume inactive status under Rule 6(c) must file an affidavit regarding notification of their change in status, if only to state there is no one to notify in any of the categories.

7. Section 7.3(j)(5)(F) of the Maine Bar Rules is amended to read as follows:

(F) The petitioner has met the continuing legal education requirements of Rule 12(a)(1) for each year the attorney has been inactive, withdrawn or prohibited from the practice of law in Maine, but need not complete more than 22 credit hours of approved continuing legal education for that entire period of absence from practice ~~with~~, provided that: (1) no more than one half of the credit hours are earned through in-office courses, self-study, or a combination thereof; and (2) at least two credit hours ~~being~~ are primarily concerned with the issues of ethics or professional responsibility.

Advisory Note

The amendment adds language consistent with Rule 12(a)(3) to clarify that attorneys seeking reinstatement may earn no more than one half of credit hours in a self-study environment.

8. Section 7.3(k)(3) of the Maine Bar Rules is amended to read as follows:

(3) The provisions of this subdivision shall not be construed to deny access to relevant information to authorized agencies investigating the qualifications of judicial candidates, or to other jurisdictions investigating qualifications for admission to practice or considering reciprocal disciplinary action, or to law enforcement agencies investigating qualifications for government employment or the National Discipline Data Bank of the American Bar Association where discipline under these rules has been imposed, or to the Committee on Judicial Responsibility and Disability, in accordance with Rule 1(a) or to the Lawyers' Fund for Client protection under LFCP Rule 12(d).

Advisory Note

The amendment adds the Lawyers' Fund For Client Protection to the list of organizations with which the Board of Overseers may share confidential grievance information for the purpose of processing claims under LFCP Rule 12(d).

9. Section 9(e)(5)(c) of the Maine Bar Rules is amended to read as follows:

(C) The petitioner and the attorney shall be notified by the Secretary as to the date, time and place of hearing, as well as the names ~~and addresses~~ of the

members of the arbitration panel appointed to arbitrate the dispute which is the subject matter of the petition. In the event of the unavailability of any of the named members, the Chair of the commission may designate other members of the Commission to serve at the hearing. Such notice of hearing will, in addition, notify the petitioner and the attorney of their right to present witnesses and documentary evidence in support of their positions, and at their own expense, to have a record of the proceedings made.

Advisory Note

In response to confidentiality concerns expressed by lay members who serve in a volunteer position for the Board and its commissions, this amendment deletes language requiring hearing notices to contain contact information for panel members. As a result, hearing notices will be limited to providing only the names of arbitration panel members.

10. Rule 10(a) of the Maine Bar Rules is amended to read as follows:

(a) Annual Fee. Every attorney required to register in accordance with these rules, other than judicial law clerks, members of the armed forces of the United States who are on active duty outside of the State of Maine, and suspended attorneys, shall pay an annual fee as established by the Court, which shall be paid to the Board with the registration statement on or before August 31 as required by Rule 6(a)(1). Judicial law clerks and members of the armed forces of the United States who are on active duty outside of the State of Maine duty must file a registration statement and pay the annual fee required for the year in which active

or inactive practice is resumed within 30 days of completion of their service. In addition to any registration fee required under the provisions of Maine Bar Rule 6(c)(1), the registration fee for attorneys registering in emeritus status under Rule 6(d) shall be \$25.00 per year until otherwise ordered by the Court.

Advisory Note

This amendment exempts judicial law clerks and attorneys who notify the Board that they are members of the armed forces of the United States and are on active duty outside of the State of Maine from the payment of the annual registration fee. The amendment further requires these attorneys to pay the annual fee required by the rule within 30 days of completion of their service.

11. These amendments to the Maine Bar Rules shall be effective January 1, 2008.

Such rules as thus adopted and amended shall be recorded in the Maine Reporter.

Dated: December 12, 2007

/s/
LEIGH I. SAUFLEY
Chief Justice

/s/
ROBERT W. CLIFFORD
Associate Justice

/s/
DONALD G. ALEXANDER
Associate Justice

/s/
JON D. LEVY
Associate Justice

/s/

WARREN M. SILVER
Associate Justice

/s/

ANDREW M. MEAD
Associate Justice

/s/

ELLEN A. GORMAN
Associate Justice