

STATE OF MAINE
SUPREME JUDICIAL COURT
AMENDMENT TO
MAINE BAR RULES

2017 Me. Rules 06

Effective: June 5, 2017

All of the Justices concurring therein, the following amendments to the Maine Bar Rules are adopted to be effective on the date indicated above. The specific amendments are stated below. To aid in the understanding of each amendment, an Advisory Note appears after the text of the amendment. The Advisory Note states the reason for recommending the amendment, but the Advisory Note is not part of the amendment adopted by the Court.

1. Rule 13(e)(7)(D) of the Maine Bar Rules is amended to read as follows:

(e) Formal Charges Hearing. If a matter is to be resolved by a formal proceeding, Bar Counsel shall prepare formal charges in writing that give fair and adequate notice of the nature of the alleged misconduct.

....

(7) *Hearing.* The Grievance Commission panel shall hold a hearing in accordance with Rule 14(a) and the following:

....

(D) Subject to approval by the chair, hearing formalities of this rule may be waived by a signed, stipulated agreement of the parties. When such a waiver includes or incorporates the parties' submission of an agreed proposed sanction order pursuant to Rule 25, that waiver shall also contain the respondent attorney's signed waiver of the right to file a petition for review under Rule 13(f).

Advisory Notes – June 2017

In Rule 13(e)(7)(D), a reference to Rule 25 is added. See the Advisory Notes – June 2017 to Rule 25 for a summary of the changes effected by the amendments to Rules 13(e)(7)(D) and 25.

2. Rule 25 of the Maine Bar Rules is amended to read as follows:

RULE 25. DISCIPLINE BY CONSENT AND SURRENDER OF LICENSE

(a) Approval of Tendered Admission. A lawyer against whom formal charges have been filed may tender to Bar Counsel a conditional admission to the petition or to a particular count thereof in exchange for a stated ~~form of discipline~~ sanction. The Grievance Commission panel may approve or reject the tendered conditional admission, subject to final approval or rejection by a Single Justice or the Court if the stated form of discipline includes disbarment, suspension, or surrender. If a Single Justice, the Court, or the Grievance Commission panel reject the stated ~~form of discipline~~ sanction, the admission and any affidavit(s) submitted pursuant to Rule 25(b) and (d) cannot be used against the respondent in any subsequent proceedings.

(b) Affidavit of Consent. A lawyer who consents to a stated ~~form of discipline~~ sanction shall present to the Grievance Commission panel an affidavit stating that the lawyer consents to the ~~discipline~~ sanction and that

(1) the consent is freely and voluntarily rendered, the lawyer is not being subjected to coercion or duress, and the lawyer is fully aware of the implications of submitting the consent;

(2) the lawyer is aware that there is presently pending an investigation into, or proceeding involving, allegations that there exist grounds for ~~discipline~~ sanction, the nature of which shall be specifically set forth;

(3) the lawyer acknowledges that the material facts so alleged are true or could be proven; and

(4) the lawyer acknowledges that sufficient evidence exists to support a finding of misconduct and the imposition of the stated ~~discipline~~ sanction.

(c) Order of Discipline. If the ~~discipline~~ sanction by consent is an admonition, probation, or reprimand, the Board Clerk shall enter the order. If the ~~discipline~~ sanction is disbarment or suspension, review for approval of the ~~discipline~~ sanction may be sought as permitted by these Rules. In all other instances in which any proposed ~~discipline~~ sanction has been approved, the Board Clerk shall file the affidavit with the Court, and upon approval the Court shall enter the order ~~disciplining~~ sanctioning the lawyer on consent.

Advisory Notes – June 2017

Rule 13(e)(7)(D) provides for the Grievance Commission’s imposition of a sanction by agreement of the parties, which may include either disciplinary or non-disciplinary sanctions. Rule 21 provides for the imposition of both disciplinary sanctions as well as a non-disciplinary sanction (admonition). By making reference only to “discipline” by consent, the former language contained in Rule 25 made no provision for the acceptance and imposition of an agreed upon non-disciplinary sanction (an admonition) by the Grievance Commission. The revised language of Rule 13(e)(7)(D) and Rule 25 makes it clear that the provisions of Rule 25 apply to both disciplinary and non-disciplinary sanctions that the Grievance Commission may impose by agreement of the parties.

Dated: June 5, 2017

FOR THE COURT,*

_____/s/_____
LEIGH I. SAUFLEY
Chief Justice

DONALD G. ALEXANDER
ANDREW M. MEAD
ELLEN A. GORMAN
JOSEPH M. JABAR
JEFFREY L. HJELM
THOMAS E. HUMPHREY
Associate Justices

* This Rule Amendment Order was approved after conference of the Court, all Justices concurring therein.