

STATE OF MAINE
SUPREME JUDICIAL COURT
AMENDMENTS TO
MAINE BAR RULES

2017 Me. Rules 01

Effective: January 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 understanding of the amendments, an Advisory Note appears after the text of each 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. The Preamble and Terminology section of the Maine Bar Rules is amended to read as follows:

PREAMBLE AND TERMINOLOGY

....

“Approved Legal Services Organization” means a pro bono publico legal services program sponsored by a court-annexed program, the Maine State Bar Association, the University of Maine School of Law; a nonprofit organization that provides legal services to persons of limited means and that receives funding from the federal Legal Services Corporation, the Maine ~~Bar~~ Justice Foundation, or the Maine Civil Legal Services Fund; or any other nonprofit legal services organization designated by the Court.

Advisory Note – January 2017

This amendment is necessitated to properly reference the Maine Justice Foundation which in 2015 replaced the Maine Bar Foundation as the bar’s agency that helps those individuals desperate for civil legal aid in Maine.

2. Rule 6 of the Maine Bar Rules is amended to read as follows:

**RULE 6. MAINTENANCE OF TRUST ACCOUNTS IN APPROVED
INSTITUTIONS: IOLTA**

....

(c) IOLTA Account Requirements.

(1) An IOLTA account is a pooled trust account earning interest or dividends at an eligible institution in which a lawyer or law firm holds funds on behalf of clients, which funds are small in amount or held for a short period of time such that they cannot earn interest or dividends for the client in excess of the costs incurred to secure such income and the account is:

- (A) an interest-bearing checking or share draft account;
- (B) a money market account with or tied to check-writing;
- (C) an account whose funds are invested solely in repurchase agreements; or
- (D) an account whose funds are invested solely in qualified money market funds.

A “qualified money market fund” is an open-end investment company registered under the Investment Company Act of 1940 that is regulated as a money market fund under Rule 270.2a-7 thereof (or any successor regulation) and that, at the time of the investment, has total assets of at least \$250,000,000, substantially all of which are invested in U.S. Government Securities. A “repurchase agreement” is a daily overnight repurchase agreement which must be fully collateralized by U.S. Government Securities and may be established only with a bank or other depository institution that is deemed to be “well capitalized” or “adequately capitalized” under applicable regulations of the Federal Deposit Insurance Corporation and National Credit Union Share Insurance Fund. U.S. Government Securities, for the purpose of this section, include securities of Government Sponsored Entities, including but not limited to Federal National Mortgage Association Securities,

Government National Mortgage Association Securities, and Federal Home Loan Mortgage Corporation Securities.

An “eligible institution” for trust accounts or IOLTA is a bank, trust company, savings bank, credit union, or savings and loan association authorized by federal or state law to do business in Maine, the deposits of which are insured by an agency of the federal government, and which has been designated by the Maine ~~Bar~~ Justice Foundation as an eligible institution.

(2) The Maine ~~Bar~~ Justice Foundation shall establish guidelines governing approval and termination of eligible status for financial institutions, and shall annually publish a list of eligible financial institutions.

(3) *Overdraft Notification Agreement Required.* To qualify as an eligible institution, a financial institution must file with the Maine ~~Bar~~ Justice Foundation an agreement, in a form provided by the Maine ~~Bar~~ Justice Foundation, to report to the Board whenever any properly payable instrument is presented against a lawyer trust account containing insufficient funds, irrespective of whether or not the instrument is honored. No trust account shall be maintained in any financial institution that does not agree to so report. Any such agreement shall apply to all branches of the financial institution and shall not be cancelled except upon 60 days’ notice in writing to the Maine ~~Bar~~ Justice Foundation. The overdraft notification agreement shall provide that all reports made by the financial institution shall be in the following format:

(A) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor and shall include a copy of the dishonored instrument, if such a copy is normally provided to depositors;

(B) In the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the lawyer or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of overdraft created thereby; and

(C) *Timing of Reports.* Reports under Rule 6(c)(5)(B) shall be made simultaneously with, and within the time provided by law for notice of dishonor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within five banking days of the date of presentation for payment against insufficient funds.

(4) *IOLTA Requirements.* In addition to the requirements above, to qualify as an eligible institution for the maintenance of IOLTA, the institution must meet the following requirements:

(A) remit the interest and dividends on this account, net of any allowable reasonable fees, at least quarterly to the Maine ~~Bar~~ Justice Foundation;

(B) transmit with each remittance a report on a form approved by the Maine ~~Bar~~ Justice Foundation that shall identify each lawyer or law firm for whom the remittance is sent, the amount of remittance attributable to each IOLTA account, the rate and type of interest and dividends applied, the amount of interest and dividends, the amount and type of account-related charges deducted, if any, and the average account balance for the period in which the report is made;

(C) transmit to the depositing lawyer or law firm a report in accordance with normal procedures for reporting to its depositors; and

(D) pay on IOLTA accounts interest or dividends no less than the highest interest rate or dividend generally available from the institution to its non-IOLTA customers on accounts having similar minimum balances and other eligibility qualifications. Interest or dividends and fees shall be calculated in accordance with the eligible institution's standard practice. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA customers, an institution may consider in addition to the balance in the IOLTA account, factors customarily considered by the institution when setting interest rates or dividends for its non-IOLTA customers, provided that such factors do not discriminate between IOLTA accounts and other accounts and that these factors do not include the fact that the account is an IOLTA account. The eligible institution shall calculate interest and

dividends in accordance with its standard practice for non-IOLTA customers. The eligible institution may choose to pay the higher interest rate or dividend on an IOLTA account in lieu of establishing it as a higher rate product. Nothing contained in this rule will be deemed to prohibit an institution from paying a higher interest rate or dividend on IOLTA accounts than required by this rule or from electing to waive any fees and service charges on an IOLTA account. Lawyers may only maintain IOLTA accounts at eligible institutions that meet this rule's requirements, as determined from time to time by the Maine ~~Bar~~ Justice Foundation.

Eligible institutions may comply with the rate requirements of this rule by electing to pay an amount on funds that would otherwise qualify for the options noted above, equal to the greater of (1) a 1% interest rate or (2) 65% of the Federal Funds Target Rate in effect on July 1 of each year, which rate remains in effect for twelve months, and which amount is deemed to be already net of allowable reasonable fees.

....

(e) Maine ~~Bar~~ Justice Foundation Actions.

(1) The Maine ~~Bar~~ Justice Foundation shall publish annually a list of eligible institutions that may hold trust and IOLTA accounts.

(2) By March 1 of each year, the Maine ~~Bar~~ Justice Foundation shall complete a financial report of the IOLTA funds received and distributed by it for the previous calendar year. The financial report shall be conducted according to generally accepted accounting principles and shall include indication of the purposes for which IOLTA funds have been expended in the previous year. Copies of the financial report shall be provided to the Court.

Advisory Note – January 2017

These various amendments to Rule 6 are necessitated to properly reference the Maine Justice Foundation which in 2015 replaced the Maine Bar Foundation as the bar's agency that helps those individuals desperate for civil legal aid in Maine.

3. Rule 13 of the Maine Bar Rules is amended to read as follows:

RULE 13. DISCIPLINARY RULES OF PROCEDURE

....

(d) Preliminary Review by Grievance Commission Panel.

....

(2) At least fourteen days in advance of the preliminary review, the Board Clerk shall prepare and deliver to Bar Counsel a statement as to the existence of any ~~disciplinary~~ sanction record, reinstatement, or surrender of license involving the respondent. Bar Counsel shall then mail the statement to the respondent. Within 10 days, the respondent may submit a reply as to the relevance of the prior sanction record to the present charge. The statement and any reply from the respondent shall be provided to the panel in accordance with Rule 13(e)(8). These procedures and filings shall not be applicable when the respondent attorney has no prior sanction record.

....

(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.

....

(6) At least 14 days before the hearing, the Board Clerk shall prepare and deliver to Bar Counsel a statement as to the existence or absence of any ~~disciplinary~~ sanction record, reinstatement, or surrender of license involving the respondent. Bar Counsel shall then mail the statement to the respondent. Within 10 days, the respondent may submit a reply as to the relevance of the prior sanction record to the present charge. The statement and any reply from the respondent shall be provided to the panel in accordance with Rule 13(e)(8).

Advisory Note – January 2017

The identical amendments to Rules 13(d)(2) and 13(e)(6) are issued to make the full disclosure of a respondent attorney's complete prior sanction history consistent with the language of Rule 13(e)(8). Under that Rule, any prior sanction record of the involved respondent attorney, including both disciplinary and non-disciplinary sanctions, is provided to a hearing panel after it has made a finding of professional misconduct in a current matter(s). Such full disclosure of that complete sanction record to review panels and hearing panels under these amendments to Rules 13(d)(2) and 13(e)(6), respectively, is also consistent with the prior practice of Grievance Commission panels under both former Bar Rule 7.1(d)(4)(B) and Board of Overseers' Regulation #31.

4. Rule 17 of the Maine Bar Rules is amended to read as follows:

RULE 17. DISCOVERY

....

(b) Disciplinary Proceedings before a Single Justice.

(1) *Scope.* Within 21 days after filing of an Answer to the Board's Information with the Executive Clerk of the Court, Bar Counsel and the respondent shall ~~furnish to the respondent copies of all exhibits presented to the Grievance Commission panel~~ (A) exchange the names and addresses of all persons having knowledge of relevant facts; (B) identify which persons are reasonably anticipated to be called as witnesses; and (C) exchange all documents Bar Counsel or respondent reasonably anticipates will be introduced at trial or hearing.

(2) *Exhibits and Transcripts.* In the event that a formal charges hearing was held before the Grievance Commission pursuant to Rule 13(e), Bar Counsel and the respondent shall make available to one another copies of all exhibits presented to the Grievance Commission hearing panel. The transcript from proceedings before the Grievance Commission hearing panel and any other matter within Bar Counsel's or the respondent's possession or control that is discoverable under Maine Rules of Civil Procedure 26, shall be made available to the respondent at the office of Bar Counsel other party at

any reasonable time for inspection and duplication at ~~the respondent's~~ that party's expense.

~~(2)~~ (3) *Resolution of Disputes.* A Single Justice shall resolve by order all disputes concerning discovery.

~~(3)~~ (4) *Additional Discovery.* Upon good cause shown, the Single Justice may order additional discovery pursuant to Maine Rules of Civil Procedure 26 to 37.

Advisory Note - January 2017

The July 2015 promulgation of Rule 17 formalized the past informal discovery procedures utilized by the parties during disciplinary proceedings conducted by the Court or the Grievance Commission. This change to Rule 17(b) directs that the mandates of the discovery requirements for Court proceedings mirror the same discovery requirements set forth in Rule 17(a), regardless of whether a Commission hearing occurred prior to that Court proceeding.

5. Rule 18 of the Maine Bar Rules is amended to read as follows:

RULE 18. ACCESS TO DISCIPLINARY INFORMATION

....

(f) Release of Confidential Information to Authorized Entities. The provisions of this rule shall not be construed to deny access to relevant information to authorized entities, including members of the Grievance, Fee Arbitration or Professional Ethics Commissions, agencies investigating the qualifications of judicial candidates, jurisdictions investigating qualifications for admission to practice of law or considering reciprocal disciplinary action, law enforcement agencies investigating qualifications for government employment, the ABA National Lawyer Regulatory Data Bank, the Committee on Judicial Responsibility and Disability, the Maine Assistance Program for Lawyers and Judges, or the Lawyers' Fund for Client Protection.

(g) Release to Law Enforcement and the Maine Assistance Program. The provisions of this section shall not be construed to prevent Bar

Counsel or any other person from notifying (1) the appropriate law enforcement agency of complaints that accuse the respondent attorney of conduct in violation of a criminal law, or (2) the Director of the Maine Assistance Program for Lawyers and Judges, of the name of any lawyer whom Bar Counsel determines should be contacted concerning that program.

(h) Release to Investigators or Prosecutors. The provisions of this section shall not be construed to prohibit Bar Counsel's use of relevant information in the investigation or prosecution of complaints pursuant to Rules 2 or 13.

(i) File Retention. The Board shall retain all files. Files may be retained in a digital format.

~~(h)~~ (j) Duty of Officials and Employees of the Board. All officials and employees of the Board in a proceeding under these Rules shall conduct themselves so as to maintain the confidentiality mandated by this rule. However, any person, including but not limited to members of the Board, Grievance Commission and Board staff, may notify governmental officials of actual or threatened criminal conduct by any individual.

~~(i)~~ (k) Copying and Attestation Fees. Copying and attestation fees shall be the same as those for proceedings in the Court.

Advisory Note – January 2017

Upon being promulgated and adopted effective July 1, 2015, it had been intended that new Rule 18 would adopt and follow the earlier script contained within the confidentiality provisions of Rule 7.3(k) (see Reporter's Notes). However, the necessary provisions and "exceptions" contained within Rule 7.3(k)(4)-(6) that allowed for proper notice of complaint matters to be given to other appropriate and necessary officials and agencies, or to such individuals Bar Counsel deems necessary to contact in order to properly and completely investigate complaints, were omitted in Rule 18 as then adopted. That necessary language is now promulgated within Rule 18(g)(h)(j), as amended.

Dated: January 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.