

	<p style="text-align: center;">American Bar Association CPR Policy Implementation Committee</p> <p style="text-align: center;">Variations of the ABA Model Rules of Professional Conduct</p> <p style="text-align: center;">Rule 3.7: Lawyer as Witness</p> <p>(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:</p> <p style="padding-left: 40px;">(1) the testimony relates to an uncontested issue;</p> <p style="padding-left: 40px;">(2) the testimony relates to the nature and value of legal services rendered in the case; or</p> <p style="padding-left: 40px;">(3) disqualification of the lawyer would work substantial hardship on the client.</p> <p>(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.</p> <p>Variations from ABA Model Rule are noted. Based on reports of state committees reviewing recent changes to the model rules. For information on individual state committee reports, see http://www.abanet.org/cpr/jclr/home.html.</p> <p>Comments not included.</p> <p>*Current links to state Rules of Professional conduct can be found on the ABA website: http://www.abanet.org/cpr/links.html*</p>
AL Effective 2/19/09	(a) Replaces “unless” with “except where.
AK Effective 4/15/09	Same as MR
AZ Effective 12/1/03	Same as MR
AR Effective 5/1/05	(b): did not adopt.
CA Current	[California’s Rules of Professional Conduct are structured differently from the ABA Model Rules. Please see California Rules :

As of October 21, 2010

Rule	http://calbar.ca.gov/calbar/pdfs/rules/Rules_Professional-Conduct.pdf
CO Effective 1/1/08	Same as MR
CT Effective 1/1/07	Same as MR
DE Effective 7/1/03	Same as MR
District of Columbia Effective 2/1/07	(a): replaces “unless” with “except where” (b): adds “not” after “may” and replaces language after “witness” with “if the other lawyer would be precluded from acting as advocate in the trial by Rule 1.7 or Rule 1.9. The provisions of this paragraph (b) do not apply if the lawyer who is appearing as an advocate is employed by, and appears on behalf of, a government agency”
FL Effective 5/22/06	(a): adds “When Lawyer May Testify.” to beginning, adds “on behalf of the client” after “witness” Adds (a)(2): the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony; (a)(3) and (4): same as MR (a)(2) and (3) (b): adds “Other Members of Law Firm as Witnesses.” to beginning
GA* Effective 1/1/01	<i>*Has not amended Rule since the most recent amendments to the ABA Model Rules</i> Adds to end: “The maximum penalty for a violation of this Rule is a public reprimand.”
HI* Effective 1/1/94	<i>*Has not amended Rule since the most recent amendments to the ABA Model Rules</i> (a) Changes “unless” to “except where.”
ID Effective 7/1/04	Same as MR
IL Effective 1/1/2010	Same as MR
IN Effective 1/1/05	Same as MR
IA Effective 7/1/05	Same as MR
KS Effective	Same as MR

As of October 21, 2010

7/1/07	
KY Effective 7/15/09	Same as MR
LA Effective 3/1/04	Same as MR
ME Effective 8/1/09	Same as MR
MD Effective 7/1/05	Same as MR
MA Rules effective 9/1/08	(a) Replaces “unless” with “except where.”
MI* Rules effective 10/1/88 New Proposed 11/24/09	<i>*Has not amended Rule since the most recent amendments to the ABA Model Rules</i> (a) Changes “unless” to “except where.” Same as 1988 Rule.
MN Effective 10/1/05	Same as MR
MS Effective 11/3/05	Retains former MR
MO Effective 7/1/07	Same as MR
MT Effective 4/1/04	Same as MR
NE Effective 9/1/05	Same as MR
NV Effective 5/1/06	Same as MR
NH Effective 1/1/08	Same as MR

As of October 21, 2010

NJ Effective 1/1/04	Same as MR
NM Effective 11/2/09	Changed to Rule 16-307; (a) Renamed “ A. Necessary witnesses; ” (b) Renamed “ B. Associate lawyer; ” Replaces “Rule 1.7 or Rule 1.9” with “Rule 16-107 or Rule 16-109 of the Rules of Professional Conduct.”
NY Effective 4/1/09	(a) Adds “on a significant issue of fact” after “necessary witness;” (a)(1) Adds “solely” after “relates;” (a)(2) Adds “solely” after “relates;” Adds (a)(4) and (5): <i>(4) the testimony will relate solely to a matter of formality, and there is no reason to believe that substantial evidence will be offered in opposition to the testimony; or</i> <i>(5) the testimony is authorized by the tribunal.</i> (b) A lawyer may not act as advocate before a tribunal in a matter if: <i>(1) another lawyer in the lawyer’s firm is likely to be called as a witness on a significant issue other than on behalf of the client, and it is apparent that the testimony may be prejudicial to the client; or</i> <i>(2) the lawyer is precluded from doing so by Rule 1.7 or Rule 1.9.</i>
NC Effective 3/1/03	Same as MR
ND Effective 8/1/06	(b): replaces “Rule 1.7 or Rule 1.9” with “a conflict of interest”
OH Effective 2/1/07	(a): adds “one or more of the following applies” to end Adds (c) A government lawyer participating in a case shall not testify or offer the testimony of another lawyer in the same government agency, except where division (a) applies or where permitted by law.
OK Effective 1/1/08	Same as MR
OR Effective 12/1/06	(a): deletes “necessary” and adds after “witness” “on behalf of the lawyer’s client” adds (a)(4): the lawyer is appearing pro se. (b): deletes language after “witness” and replaces with “on behalf of the lawyer’s client” adds (c): If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that the lawyer or a member of the lawyer’s firm may be called as a witness other than on behalf of the lawyer’s client, the lawyer may continue the representation until it is apparent that the lawyer’s or firm member’s testimony is or may be prejudicial to the lawyer’s client.
PA Effective	Same as MR

As of October 21, 2010

7/1/06	
RI Effective 4/15/07	Same as MR
SC Effective 10/1/05	Same as MR
SD Effective 1/1/04	adds (a)(4): except as otherwise provided by statute
TN Effective 1/1/2011	Same as MR
TX Rules effective 4/6/95	<p><i>*Has not amended Rule since the most recent amendments to the ABA Model Rules</i></p> <p>(a) Changes language after “shall not” to “accept or continue employment as an advocate before a tribunal in a contemplated or pending adjudicatory proceeding if the lawyer knows or believes that the lawyer is or may be a witness necessary to establish an essential fact on behalf of the lawyer’s client, unless;”</p> <p><i>(a)(2) the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony;</i></p> <p>(a)(3) is MR (a)(2);</p> <p><i>(a)(4) the lawyer is a party to the action and is appearing pro se; or</i></p> <p>(a)(5) is equivalent to MR (a)(3) but changes language to:</p> <p style="padding-left: 40px;"><i>(5) the lawyer has promptly notified opposing counsel that the lawyer expects to testify in the matter and disqualification of the lawyer would work substantial hardship on the client;</i></p> <p>Does not have MR (b);</p> <p>Adds:</p> <p style="padding-left: 40px;"><i>(b) A lawyer shall not continue as an advocate in a pending adjudicatory proceeding if the lawyer believes that the lawyer will be compelled to furnish testimony that will be substantially adverse to the lawyer’s client, unless the client consents after full disclosure.</i></p> <p style="padding-left: 40px;"><i>(c) Without the client’s informed consent, a lawyer may not act as advocate in an adjudicatory proceeding in which another lawyer in the lawyer’s firm is prohibited by paragraphs (a) or (b) from serving as advocate. If the lawyer to be called as a witness could not also serve as an advocate under this Rule, that lawyer shall not take an active role before the tribunal in the presentation of the matter.</i></p>
UT Effective 11/1/05	Same as MR

As of October 21, 2010

VT Effective 9/1/09	Same as MR
VA Effective 1/1/04	(a): replaces “at a trial” with “in an adversarial proceeding” and “unless” with “except where” Adds (b) If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that the lawyer may be called as a witness other than on behalf of the client, the lawyer may continue the representation until it is apparent that the testimony is or may be prejudicial to the client. (c): replaces “a trial” with “an adversarial proceeding”
WA Effective 9/1/06	Adds (a)(4) the lawyer has been called by the opposing party and the court rules that the lawyer may continue to act as an advocate.
WV* Effective 1/1/89	<i>*Has not amended Rule since the most recent amendments to the ABA Model Rules</i> (a) Changes “unless” to “except where.”
WI Effective 7/1/07	Same as MR
WY Effective 7/1/06	Same as MR

Copyright © 2010 American Bar Association. All rights reserved. Nothing contained in these charts is to be considered the rendering of legal advice. The charts are intended for educational and informational purposes only. Information regarding variations from the ABA Model Rules should not be construed as representing policy of the American Bar Association. The charts are current as of the date shown on each. A jurisdiction may have amended its rules or proposals since the time its chart was created. If you are aware of any inaccuracies in the charts, please send your corrections or additions and the source of that information to John Holtaway, (312) 988-5298, jholtaway@staff.abanet.org.