

**Comparison of Newly Adopted Alaska Rules of Professional Conduct
with ABA Model Rules**

	ALASKA
Preamble	<p>New rules as adopted by Alaska Supreme Court to be effective 4/15/09. Variations from the Model Rules are noted. Rules only; comment comparison not included.</p>
Scope	<p>Changes “in confidence...representation” to “the confidences and secrets;”</p> <p>[15] Changes “under such other law” to “under this other law;”</p> <p>[18] Replaces language after “multiple private clients” with “They also may have authority to represent the “public interest” in circumstances where a private lawyer would not be authorized to do so. These Rules do not abrogate any such authority. See <i>Botelho v. Griffin</i>, 25 P.3d 689 (Alaska 2001).”</p>
Rule 1.0	<p>“This rule will be moved to the end and will appear as the last rule”</p> <ul style="list-style-type: none"> • “Belief:” changes “supposed” to “thought;” • (b) “Client” denotes a person, a public officer or agency, or a corporation, association, organization, or other entity, either public or private, who receives professional legal services from a lawyer; • “Confirmed in writing:” changes reference to paragraph (g) instead of (e); • “Firm:” adds “It also denotes” before “lawyers employed” and adds to end: “See COMMENT, Rule 1.10;” • “Fraud:” replaces “that is fraudulent...and has a” with “(including acts of omission) performed with a” and adds “it does not include negligent misrepresentation or negligent failure to apprise another of relevant information;” • “Informed consent:” replaces “communicated...explanation about the” with “adequately explained;” • Adds: (i) “Matter” includes any judicial or other proceeding, any application, or request for a ruling or other determination, and any contract, claim, controversy, investigation, charge, accusation, arrest, negotiation, or other particular transaction or dealings involving a specific party or parties; • Adds: (k) “Person” denotes a government officer or agency, corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person; • “Screened:” changes “lawyer” to “person;” • Adds: (q) “Substantially related” matters for purposes of the rules governing a lawyer’s duties to former, current, and prospective clients denotes matters: <ul style="list-style-type: none"> (1) that involve the same transaction or the same underlying legal dispute, or (2) where there is a substantial risk that confidential factual information obtained in the prior matter would materially advance a client’s position in the subsequent matter.

	<p><i>In assessing the risk under subsection (2), a court or disciplinary body may rely on the nature of the services that the lawyer provided to the earlier client, the type of information that would ordinarily be learned by a lawyer providing such services, and whether this information would predictably be used to the detriment of the earlier client by a zealous, conflict-free advocate. However, matters will not be deemed “substantially related” under paragraph (2) if the confidential information imparted to the lawyer has since been disclosed to the public or to other adverse parties.</i></p>
Rule 1.1	<p>Adds (b):</p> <p><i>(b) In an emergency, a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required or in which referral to or consultation or association with another lawyer would be impractical; provided, however, that the assistance shall be limited to that reasonably necessary in the circumstances and the client shall be advised of the lawyer’s limited knowledge in the legal field in which the advice is sought.</i></p>
Rule 1.2	<p>(a) Adds reference to paragraph (e); deletes clause “as required by Rule 1.4;” changes “settle a matter” to “offer or accept a settlement;” adds to end of paragraph, “whether to take an appeal;”</p> <p>(c) Changes “gives informed consent” to “consents after consultation;”</p> <p>Adds to paragraph (c):</p> <p><i>(1) If a written fee agreement is required by Rule 1.5, the agreement shall describe the limitation on the representation.</i></p> <p><i>(2) The lawyer shall discuss with the client whether a written notice of representation should be provided to other interested parties.</i></p> <p><i>(3) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with this rule is considered to be unrepresented for purposes of Rules 4.2 and 4.3 unless the opposing lawyer knows of or has been provided with:</i></p> <p><i>(A) a written notice stating that the lawyer is to communicate only with the limited representation lawyer as to the subject matter of the limited representation; or</i></p> <p><i>(B) a written notice of the time period during which the lawyer is to communicate only with the limited representation lawyer concerning the subject matter of the limited representation.</i></p> <p>(d) Deletes “or assists a client” and adds “or assist” after “counsel;”</p> <p>Adds (e):</p> <p><i>(e) When a lawyer knows that a client expects assistance not permitted by the rules of professional conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer’s conduct.</i></p>
Rule 1.3	Same as MR
Rule 1.4	(a) Similar to MR (a)(3) but with different wording and more details:

	<p><i>A lawyer shall keep a client reasonably informed about the status of a matter undertaken on the client's behalf and promptly comply with reasonable requests for information. A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.</i></p> <p>(b) Similar to MR (a)(1) but with different wording and more details: <i>A lawyer shall promptly inform the client of any decision or circumstance that requires the client's informed consent, unless the client has already made an informed decision on the matter in previous discussions. Until the client has given the required informed consent, a lawyer shall refrain from taking binding action on the matter.</i></p> <p>Adds (c): <i>A lawyer shall inform an existing client in writing if the lawyer does not have malpractice insurance of at least \$100,000 per claim and \$300,000 annual aggregate and shall inform the client in writing at any time the lawyer's malpractice insurance drops below these amounts or the lawyer's malpractice insurance is terminated. A lawyer shall maintain a record of these disclosures for six years from the termination of the client's representation. This paragraph does not apply to lawyers employed by the government as salaried employees or to lawyers employed as inhouse counsel.</i></p> <p>Does not adopt MR (a)(2), (4), or (5); does not adopt MR (b).</p>
Rule 1.5	<p>(a)(2) Deletes "if apparent to the client;"</p> <p>Replaces (b) with: <i>(b) If a fee will exceed \$1000, the basis or rate of the fee shall be communicated to the client in a written fee agreement before or within a reasonable time after commencing the representation. This written fee agreement shall describe the scope of the representation and shall include the disclosure required under Rule 1.4(c). In a case involving litigation, the lawyer shall notify the client in the written fee agreement that the client may be liable for the opposing party's costs, fees, or expenses if the client is not the prevailing party.</i></p> <p>(c) Replaces clause beginning with "A contingent fee agreement" with: <i>"A fee agreement that is in whole or part contingent shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal;"</i></p> <p>Deletes sentence: "The agreement...prevailing party;"</p> <p>Replaces (e)(1) and (e)(2) with: <i>(1) the division is in proportion to the contribution of each firm or, by written agreement with the client, each firm assumes joint responsibility for the representation;</i> <i>(2) the client agrees to the participation of each firm, including the share each firm will receive, and the participation is</i></p>

	<i>confirmed to the client in writing; and</i>
Rule 1.6	<p>First part of AK Rules (a) is similar to first part of MR (a), but changes wording to: “A lawyer shall not reveal a client’s confidence or secret unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation and disclosures permitted by paragraph (b) below or Rule 3.3(a)(2);”</p> <p>Adds to end of paragraph (a): For purposes of this rule, "confidence" means information protected by the attorney-client privilege under applicable law, and "secret" means other information gained in the professional relationship if the client has requested it be held confidential or if it is reasonably foreseeable that disclosure of the information would be embarrassing or detrimental to the client. In determining whether information is protected from disclosure under this rule, the lawyer shall resolve any uncertainty in favor of the duty of confidentiality.</p> <p>(b) A lawyer may reveal a client’s confidence or secret to the extent the lawyer reasonably believes necessary: (b)(1): Moves “death” to subparagraph (b)(1)(A) and “substantial bodily harm” to (b)(1)(B); Adds subparagraph (b)(1)(C): “wrongful execution or incarceration of another”</p> <p>Adds (c): “A lawyer must act competently to safeguard a client’s confidences and secrets against inadvertent or unauthorized disclosure by the lawyer, by other persons who are participating in the representation of the client, or by any other persons who are subject to the lawyer’s supervision. See Rules 1.1, 5.1, and 5.3. When transmitting a communication that includes a client’s confidence or secret, the lawyer must take reasonable precautions to prevent this information from coming into the hands of unintended recipients.”</p> <p>Adopts 2003 Task Force changes</p>
Rule 1.7	<p>Adds (c): <i>A lawyer shall act with reasonable diligence in determining whether a conflict of interest, as described in paragraphs (a) and (b) of this rule, or Rules 1.8, 1.9 and 1.10 exists.</i></p> <p>Adds (d): <i>For purposes of this rule, the term “client” does not include unidentified members of a class in a class action or identified members of a class when individual recovery is expected to be de minimis.</i></p>
Rule 1.8	<p>(a)(2) is equivalent to MR but changes language to: <i>(2) the lawyer advises the client in writing to seek independent legal advice on the transaction and gives the client a reasonable opportunity to do so; and;</i></p> <p>(b) Replaces “information...client” with “a confidence or secret of a client;” Adds “in a writing signed by the client” after “informed consent;”</p> <p>(c) Adds “or domestic” before “relationship;”</p> <p>(d) Replaces language after “substantial part on” with “a client’s confidences</p>

	<p>and secrets;”</p> <p>(f)(3) Replaces “representation of a client” with “a client’s confidences or secrets are;”</p> <p>(h)(1) Deletes language after “malpractice;”</p> <p>(h)(2) Deletes language after “legal counsel;”</p> <p>(j) Adds to end: “and the sexual relationship does not create a conflict under Rule 1.7(a)(2). For purposes of this rule, when the client is an organization, “client” means a constituent of the organization who supervises, directs, or regularly consults with that lawyer concerning the organization's legal matters. See Rule 1.13(h) for the definition of “constituent;””</p> <p>(k) Deletes “(a) through (i)” and adds “except (j).”</p>
Rule 1.9	<p>(c)(1) Changes language before “except as these Rules” to: <i>use confidences and secrets to the disadvantage of the former client;</i></p> <p>(c)(2) Changes “information” to “confidences and secrets.”</p>
Rule 1.10	<p>Combines (a) and (a)(1), and deletes (a)(2), and paragraphs (i), (ii), and (iii).</p> <p>(b)(2) Adds to end of paragraph: “or the firm retains records containing such information.”</p> <p>Comments: Adopts [1] through [6], as well as [11] (Comment [7] in State Rules) and [12] (Comment [8] in State Rules). Changes references to Rules to correspond to Alaska Rules.</p>
Rule 1.11	(e)(1) Changes “contract” to “transaction.”
Rule 1.12	(c)(2) Changes last clause, beginning with “and,” to: “and to any tribunal considering the matter.”
Rule 1.13	<p>(b) Similar to former MR but replaces “action...in a matter related” with “conduct or intends to engage in conduct (whether act or omission);” replaces “is a violation” and “or a violation” with “violates;” replaces “to the organization, and that is likely” with “to the organization, and that this conduct is likely;”</p> <p>(b)(3) is similar to former MR but adds to end of paragraph: “The lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law, unless the lawyer reasonably believes that this is not necessary or is not in the best interest of the organization.”</p> <p>(c)(1) Changes “address in a timely and appropriate manner an action” to “timely and appropriately rectify a threatened or ongoing action”</p> <p>(c)(2) Deletes from “then the lawyer” through the end of the paragraph</p> <p>(d) Changes “shall not apply with respect to information” with “does not apply to client confidences and secrets”</p> <p>Adds (h): “Constituents” denotes officers, directors, employees and shareholders of a corporate client, or positions equivalent to officers, directors,</p>

	<p>employees, and shareholders held by persons acting for an organizational client that is not a corporation. Adopts modified 2003 Task Force changes</p>
<p>Rule 1.14</p>	<p>(a) Changes “diminished” to “impaired;” (b) Changes “diminished” to “impaired;” adds “that the client” before “cannot adequately;” (c) Changes beginning of paragraph, until “capacity,” to: “The confidences and secrets of a client with impaired capacity.”</p>
<p>Rule 1.15</p>	<p>(c) Replaces “the lawyer’s...paid in advance” and adds instead “funds received for future fees and expenses into a client trust account;” (e) Adds “conflicting” before “interests;” Adds: <i>(f) Unless an election not to participate is submitted in accordance with the procedure set forth in paragraph (g), a lawyer or law firm shall establish and maintain an interest bearing insured depository account into which must be deposited funds of clients which are nominal in amount or are expected to be held for a short period of time, but only in compliance with the following provisions:</i> <i>(1) No earnings from such account shall be made available to the lawyer or law firm and the lawyer or law firm shall have no right or claim to such earnings.</i> <i>(2) Only funds of clients which are nominal in amount or are expected to be held for a short period of time may be deposited in such account. Funds which reasonably may be expected to generate in excess of one hundred dollars interest may not be deposited in such account.</i> <i>(3) The depository institution shall be directed by the lawyer or law firm establishing such account:</i> <i>Supreme Court Order No.1680 Page 128 of 271</i> <i>Effective Date: April 15, 2009</i> <i>(a) To remit earnings from such account, net of any service charges or fees, as computed in accordance with the institution’s standard accounting practice to the Alaska Bar Foundation, Inc., at least quarter-annually; and</i> <i>(b) To transmit with each remittance of earnings a statement showing the name of the lawyer or law firm on whose account the remittance is sent and the rate of interest applied, with a copy of such statement to such lawyer or law firm.</i> <i>(4) The lawyer or law firm shall review the account at reasonable intervals to determine if changed circumstances required further action with respect to the funds of any client.</i> <i>(g) A lawyer shall indicate on the lawyer’s annual bar dues notice whether the lawyer or the lawyer’s law firm: 1) elects to maintain the account described in paragraph (f); 2) elects not to maintain the account described in paragraph (f); or 3) does</i></p>

	<i>not maintain a trust account. A lawyer or law firm who wishes to change a previous election may do so at any time by notifying the Alaska Bar Association in writing.</i>
Rule 1.16	Same as MR
Rule 1.17	(a) Uses “judicial district;” (c) Changes “information...representation” to “client confidences and secrets.”
Rule 1.18	Same as MR
Rule 2.1	Adds clause, “and the availability of alternative forms of dispute resolution.”
Rule 2.3	Same as MR
Rule 2.4	Same as MR
Rule 3.1	Adds “non-frivolous” before “basis” and deletes “that is not frivolous;” replaces “which includes” with “including;” In last sentence, adds “or involuntary institutionalization” after “incarceration.”
Rule 3.2	Same as MR
Rule 3.3	(a)(3) Adds “and timely” after “reasonable;” (b) Adds clause after “that a person:” “including the lawyer’s client;” (d) Changes “that will enable” to “that are necessary to enable;” adds to end of paragraph: “to the lawyer’s position.”
Rule 3.4	(a) Similar to text of MR Rule and (a), but in last sentence changes “A lawyer shall not counsel” to “nor shall a lawyer counsel;” (b) Adds to beginning, “A lawyer shall not;” (c) Changes wording: Adds “A lawyer shall not” before “knowingly,” adds “violate or” before “disobey,” adds “an order of the tribunal or” before “an obligation,” adds “that the order is invalid or” before “that no...exists;” (d) Deletes “in pretrial procedure” and adds “A lawyer shall not” to beginning; (e) Adds “A lawyer shall not” to beginning, divides last sentence into two, ending the first sentence after “admissible evidence,” and adds “A lawyer shall not” to beginning of last sentence; (f) Combines MR (f), (f)(1) and (f)(2).
Rule 3.5	Deletes “A lawyer shall not:” before (a) and inserts this language at the beginning in sections (a), (b), and (d). (b) Replaces “such a person” with “judge, juror, or prospective juror, or any other official;” deletes clause “during the proceeding;” adds “or paragraph (c) of this rule” to end. (c) Adds clause “After a jury is discharged, a lawyer may” before “communicate;” adds “or a former” before “prospective;” deletes “juror” after prospective, adds “or an alternate juror” to end; deletes “after...jury if” (c)(1) Replaces “has made known to” with “has notified;” replaces wording after “lawyer” with the clause “or the lawyer’s agent that the juror does not desire to communicate.” <i>Adds (4): the communication is calculated to improperly influence the juror’s action in future jury service.</i>
Rule 3.6	Same as MR
Rule 3.7	Same as MR

Rule 3.8	Does not adopt (c), (g) or (h).
Rule 3.9	Replaces language with: <i>A lawyer representing a client before a legislative body or committee or administrative agency in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rules 3.3(a) through (c), 3.4(a) through (c), and 3.5.</i>
Rule 4.1	Same as MR
Rule 4.2	Uses “party or person”
Rule 4.3	Same as MR
Rule 4.4	Same as MR
Rule 5.1	(c)(2): same as MR but adds “the lawyer individually or together with other lawyers” before “has comparable”
Rule 5.2	Same as MR
Rule 5.3	(a) is the same as text of MR Rule (a)(1) is similar to MR (a) but adds “in a law firm” after “partner;” changes “possesses” to “has;” (a)(2) is the same as MR (b); (a)(3) is the same as MR (c); (a)(3)(A) is the same as MR (c)(1); (a)(3)(B) is similar to MR (c)(2) but adds “the lawyer individually or together with other lawyers” before “has comparable;” Adds (b), (c), and (d): <i>(b) A lawyer shall advise a nonlawyer who ends an association with the lawyer not to disclose confidences and secrets protected by Rule 1.6 that were learned by the nonlawyer during the association.</i> <i>(c) A lawyer who employs, retains, or forms an association with a nonlawyer shall advise the nonlawyer not to disclose confidences and secrets protected by Rule 1.6 learned by the nonlawyer during an association with another lawyer. If the nonlawyer participated in a matter that would create a conflict of interest for a lawyer under Rule 1.7 or Rule 1.9, the nonlawyer shall be screened from any participation in the matter.</i> <i>(d) A lawyer who learns that any person employed by the lawyer has revealed a confidence or secret protected by these rules shall notify the person whose confidence or secret was revealed.</i>
Rule 5.4	(a)(2) Changes “or disappeared lawyer may” to “or whose whereabouts are unknown may;”
Rule 5.5	(a) Replaces language following “in a jurisdiction” with “unless authorized to do so by the laws of that jurisdiction.”
Rule 5.6	Adds to beginning of text, “Except as permitted by Rule 1.17.”
Rule 5.7	Same as MR
Rule 6.1	Same as MR

Rule 6.2	Same as MR
Rule 6.3	Same as MR
Rule 6.4	Deletes “shall disclose that fact” and replaces with “shall make an appropriate disclosure within the organization.”
Rule 6.5	Same as MR
Rule 7.1	<p>Adds “or any prospective client's need for legal services” after “lawyer’s services;”</p> <p>(a) is the same as part of Model Rule, from “contains” to “misleading;”</p> <p>Adds:</p> <p style="padding-left: 40px;"><i>(b) is likely to create a reasonable but unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law; or</i></p> <p style="padding-left: 40px;"><i>(c) compares the lawyer's services with other lawyers’ services, unless the comparison can be factually substantiated.</i></p>
Rule 7.2	Same as MR
Rule 7.3	Same as MR
Rule 7.4	<p>First sentence of first paragraph is the same as MR (a); Second sentence is similar to MR (d) but replaces language after “lawyer is” with “a “specialist,” certified,” or words of similar import except as follows;”</p> <p>(a) is the same as MR (b);</p> <p>Adds:</p> <p style="padding-left: 40px;"><i>(b) a lawyer may communicate the fact that the lawyer has been certified as a specialist in a field of law by a named organization or authority, but only if that certification is granted by an organization or authority whose specialty certification program is accredited by the American Bar Association.</i></p> <p>Does not adopt MR (c), (d)(1) or (d)(2).</p>
Rule 7.5	<p>(d) Replaces language after “organization” with “unless the relationship stated or implied in fact exists;”</p> <p>Adds:</p> <p style="padding-left: 40px;"><i>(e) The term “of counsel” shall be used only to refer to a lawyer who has a close continuing relationship with the firm.</i></p>
Rule 7.6	Does not adopt
Rule 8.1	Same as MR
Rule 8.2	(b) Adds “Canon 5 of” before “the Code of Judicial Conduct.”
Rule 8.3	<p>(a) Adds to end: “unless the lawyer reasonably believes that the misconduct has been or will otherwise be reported;”</p> <p>(b) Adds “disciplinary” before “authority” and adds: “unless the lawyer reasonably believes that the misconduct has been or will otherwise be reported.”</p>
Rule 8.4	<p>Does not adopt MR (d); (d) Similar to MR (e), but adds “either” after “an ability”</p> <p>[3] Does not adopt</p>

As of February 11, 2010

Rule 8.5	(a) Changes “in this jurisdiction” to “Alaska” or “this State” throughout.
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