

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

	ARKANSAS
Preamble	<p>Rules as adopted by Arkansas Supreme Court to be effective 5/1/05. Variations from the Model Rules are noted. Rules only; comment comparison not included.</p> <p>[5], adds to end: A lawyer should avoid even the appearance of impropriety. Adds [13A]: A lawyer owes a solemn duty to uphold the integrity and honor of the profession; to encourage respect for the law and for the courts; to act as a member of a learned profession; to conduct affairs so as to reflect credit on the legal profession; and to inspire the confidence, respect and trust of clients and the public. To accomplish those objectives, the lawyer must strive to avoid not only professional impropriety, but also the appearance of impropriety. The duty to avoid the appearance of impropriety is not a mere phrase. It is part of the foundation upon which are built the rules that guide lawyers in their moral and ethical conduct. This obligation should be considered in any instance where a violation of the rules of professional conduct are at issue. The principle pervades these Rules and embodies their spirit.</p>
Scope	<p>[14], fifth sentence: adds “professional” before “discretion.” [20]: deletes last sentence.</p>
Rule 1.0	Identical
Rule 1.1	Identical
Rule 1.2	Identical
Rule 1.3	Identical
Rule 1.4	<p>(a)(5), deletes: with the client about any relevant limitation on the lawyer’s conduct. Adds (c): A lawyer shall promptly notify a client in writing of the actual or constructive receipt by the attorney of a check or other payment received from an insurance company, an opposing party, or from any other source which constitutes the payment of a settlement, judgment, or other monies to which the client is entitled.</p>
Rule 1.5	<p>(a), adds to beginning: A lawyer's fee shall be reasonable. (c): writing does not have to be signed by client. (d)(1), adds to end: Provided, however, after a final order or decree is entered a lawyer may enter into a contingent fee contract for collection of payments which are due pursuant to such decree or order. (e)(1), adds after “or:” by written agreement with the client. (e)(2) reads: the client is advised of and does not object to the participation of all the lawyers involved; and.</p>
Rule 1.6	<p>(b), deletes: relating to the representation of the client. (b)(1) reads: to prevent the commission of a criminal act. (b)(2) does not include crime. Deletes “substantial” before “injury.” (b)(3): deletes “substantial” before “injury.” Adds (c): Neither this Rule nor Rule 1.8(b) nor Rule 1.16(d) prevents the lawyer</p>

	from giving notice of the fact of withdrawal, and the lawyer may also withdraw or disaffirm any opinion, document, affirmation or the like.
Rule 1.7	Identical
Rule 1.8	(c), after “include,” reads: a person within the third degree of relationship to the lawyer or the client. The following persons are relatives with the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grand child, great-grand child, nephew or niece. (h)(1), after “unless the client is,” reads: represented by independent legal counsel. adds (l): A lawyer related to another lawyer as parent, child, sibling or spouse shall not represent a client in a representation directly adverse to a person whom the lawyer knows is represented by the other lawyer except upon informed consent by the client, confirmed in writing.
Rule 1.9	Identical
Rule 1.10	(a): adds 3.7 to list after 1.9
Rule 1.11	Title: SUCCESSIVE GOVERNMENT AND PRIVATE EMPLOYMENT. (d)(2)(ii), after “substantially” reads: unless the lawyer has the consent, confirmed in writing, of the appropriate government supervisor or official. A lawyer serving as a law clerk to a judge or other adjudicative officer is subject to Rule 1.12(b).
Rule 1.12	Identical
Rule 1.13	Identical
Rule 1.14	(b) adds to end: Extreme caution must be exercised by a lawyer before nominating the lawyer, a member or employee of the lawyer's firm, or a relative within the third degree or relationship to serve as guardian ad litem, conservator or guardian.
Rule 1.15	Title, adds: AND TRUST ACCOUNTS (a) Safekeeping property. (1) A lawyer shall hold property of clients or third persons, including prospective clients, that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. (2) Property, other than funds of clients or third persons, shall be identified as such and appropriately safeguarded. (3) Complete records of trust account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after the termination of the representation or the last contact with a prospective client. (4) A lawyer shall maintain on a current basis books and records in accordance with generally accepted accounting practice and comply with any record keeping rules established by law, rule, or court order. (5) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person in writing. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full written accounting regarding such property to the client or third persons. (6) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is

resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(b) Trust Accounts: IOLTA trust accounts and non-IOLTA trust accounts.

(1) Funds of a client shall be deposited and maintained in one or more separate, clearly identifiable trust accounts in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person.

(2) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(3) A lawyer may deposit funds belonging to the lawyer or the law firm in a client trust account for the sole purposes of paying bank services charges on that account, or to comply with the minimum balance required for the waiver of bank charges, but only in the amount necessary for those purposes, but not to exceed \$500.00 in any case. Such funds belonging to the lawyer or law firm shall be clearly identified as such in the account records.

(4) Each trust account referred to in section (b) (1) shall be an interest-bearing trust account in a bank, savings bank, trust company, savings and loan association, savings association, credit union, or federally regulated investment company, and the institution shall be insured by an agency of the federal government.

(5) Each such trust account shall provide overdraft notification to the Executive Director of the Office of Professional Conduct for the purpose of reporting whenever any properly payable instrument is presented against a lawyer trust account containing insufficient funds, irrespective of whether or not the instrument is honored. The financial institution shall report simultaneously with its notice to the lawyer the following information:

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

(ii) 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.

(6) A lawyer who receives client funds which, in the judgment of the lawyer, are nominal in amount, or are expected to be held for such a short period of time that it is not practical to earn and account for income on individual deposits, shall create and maintain an interest-bearing, multi-client trust account ("IOLTA" account) for such funds. The account shall be maintained in compliance with the following requirements:

(i) The trust account shall be maintained in compliance with sections (b)(1) - (b)(5) of this Rule and the funds shall be subject to withdrawal upon request and without delay;

(ii) No earnings from the account shall be made available to the lawyer or law firm; and,

	<p>(iii) The interest accruing on this account, net of reasonable check and deposit processing charges which shall only include any items deposited charge, monthly maintenance fee, per item check charge, and per deposit charge, shall be paid to the Arkansas IOLTA Foundation, Inc. All other fees and transaction costs shall be paid by the lawyer or law firm.</p> <p>(7) All client funds shall be deposited in the account specified in section (b)(6), unless they are deposited in a separate interest-bearing account (“non-IOLTA” account) for a specific and individual matter for a particular client. There shall be a separate account opened for each such particular client matter. Interest so earned must be held in trust as property of each client in the same manner as is provided in this Rule.</p> <p>(8) The interest paid on the account shall not be less than, nor the fees and charges assessed greater than, the rate paid or fees and charges assessed, to any non-lawyer customers on accounts of the same class within the same institution.</p> <p>(9) The decision whether to use an “IOLTA” account specified in section (b)(6) or a “non-IOLTA” account specified in section (b)(7) is within the discretion of the lawyer. In making this determination, consideration should be given to the following:</p> <p>(i) The amount of interest which the funds would earn during the period they are expected to be deposited; and,</p> <p>(ii) The cost of establishing and administering the account, including the cost of the lawyer's or law firm's services.</p> <p>(10) All lawyers who maintain accounts provided for in this Rule, must convert their client trust account(s) to interest-bearing account(s) with the interest to be paid to the Arkansas IOLTA Foundation, Inc. no later than six months from the date of the order adopting this Rule, unless the account falls within subsection (b)(7). Every lawyer practicing or admitted to practice in this State shall, as a condition thereof, be conclusively deemed to have consented to the reporting requirements mandated by this rule. All lawyers shall certify annually that they, their law firm or professional corporation is in compliance with all sections and subsections of this Rule.</p> <p>(11) A lawyer shall certify, in connection with the annual renewal of the lawyer's license, that the lawyer is complying with all provisions of this rule. Certification shall be made on a form provided by and in a manner designated by the Clerk of the Supreme Court.</p> <p>(12) A lawyer or a law firm may be exempt from the requirements of this rule if the Arkansas IOLTA Foundation's Board of Directors, on its own motion, has exempted the lawyer or law firm from participation in the Program for a period of no more than two years when service charges on the lawyer's or law firm's trust account equal or exceed any interest generated.</p>
Rule 1.16	Identical
Rule 1.17	Adds (e): In every instance in which a law practice in its entirety is sold, the selling attorney, or the legal representative thereof, in the case of a deceased, disabled or disappeared attorney, shall within twenty (20) days of the completion

	of the sale, file an affidavit with the Committee on Professional Conduct that he or she has complied with the requirements of notice contained within this provision, to include proof of publication, along with a list of clients so notified and an exemplar of such notice. Such affidavit shall also contain the address where communications may thereafter be directed to the affiant.
Rule 1.18	Identical
Rule 2.1	Identical
Rule 2.2	Identical
Rule 2.3	Identical
Rule 2.4	Identical
Rule 3.1	Identical
Rule 3.2	Identical
Rule 3.3	Identical
Rule 3.4	Identical
Rule 3.5	Identical
Rule 3.6	<p>(a), adds to end: A statement referred to in this paragraph ordinarily is likely to have such an effect when it refers to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration, and the statement relates to:</p> <p>(1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;</p> <p>(2) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;</p> <p>(3) the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;</p> <p>(4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;</p> <p>(5) information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and would if disclosed create a substantial risk of prejudicing an impartial trial; or</p> <p>(6) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.</p> <p>(b): adds after (a) "and its subparagraphs."</p>
Rule 3.7	(b): did not adopt.
Rule 3.8	(e): did not adopt.
Rule 3.9	Identical
Rule 4.1	Identical

Rule 4.2	Does not include “or a court order.”
Rule 4.3	Identical
Rule 4.4	Identical
Rule 5.1	Identical
Rule 5.2	Identical
Rule 5.3	Identical
Rule 5.4	Identical
Rule 5.5	Identical
Rule 5.6	(a) reads: a partnership or employment agreement that restricts the rights of a lawyer to practice after termination of the relationship, except an agreement concerning, either benefits upon retirement or an agreement pursuant to the provisions of Rule 1.17; or
Rule 5.7	Identical
Rule 6.1	Identical
Rule 6.2	Identical
Rule 6.3	Identical
Rule 6.4	Identical
Rule 6.5	Identical
Rule 7.1	Material after “if it” moved to paragraph (a). Adds: (b) is likely to create an unjustified expectation about the 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; (c) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated; or (d) contains a testimonial or endorsement.
Rule 7.2	(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, outdoor advertising, radio or television, or through written communication. (b) A copy or recording of an advertisement or communication shall be kept for five years after its last dissemination along with a record of when and where it was used. (c) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of advertisements or communications permitted by this rule and may pay the usual charges for not-for-profit lawyer referral service or other legal service organization; and may pay for a law practice in accordance with Rule 1.17. (d) Any communication made pursuant to this Rule shall include the name of at least one lawyer who is licensed in Arkansas and who is responsible for its content, and shall disclose the geographic location of the office or offices of the attorney or the firm in which the lawyer or lawyers who actually perform the services advertised principally practice law. (e) Advertisements may include photographs, voices or images of the lawyers who

	<p>are members of the firm who will actually perform the services. If advertisements utilize actors or other individuals, those persons shall be clearly and conspicuously identified by name and relationship to the advertising lawyer or law firm and shall not mislead or create an unreasonable expectation about the results the lawyer may be able to obtain. Clients or former clients shall not be used in any manner whatsoever in advertisements. Dramatization in any advertisement is prohibited.</p>
Rule 7.3	<p>(a) A lawyer shall not solicit, by any form of direct contact, in-person or otherwise, professional employment from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain.</p> <p>(b) Notwithstanding the prohibitions described in Paragraph (a), a lawyer may solicit professional employment from a prospective client known to be in need of legal services in a particular matter by written communication. Such written communication shall:</p> <ol style="list-style-type: none">(1) include on the bottom left hand corner of the face of the envelope the word "Advertisement" in red ink, with type twice as large as that used for the name of the addressee;(2) only be sent by regular mail;(3) not have the appearance of legal pleadings or other official documents;(4) plainly state in capital letters "ADVERTISEMENT" on each page of the written communication;(5) begin with the statement that "If you have already retained a lawyer, please disregard this letter";(6) include the following statement in capital letters: "ANY COMPLAINTS ABOUT THIS LETTER OR THE REPRESENTATION OF ANY LAWYER MAY BE DIRECTED TO THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT, C/O CLERK, ARKANSAS SUPREME COURT, 625 MARSHALL STREET, LITTLE ROCK, ARKANSAS 72201"; and,(7) shall comply with all applicable rules governing lawyer advertising. <p>(c) In death claims, the written communication permitted by paragraph (b) shall not be sent until 30 days after the accident.</p> <p>(d) Any written communication prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member shall disclose how the lawyer obtained the information prompting the communication.</p> <p>(e) Even when otherwise permitted by this rule, a lawyer shall not solicit professional employment from a prospective client by written or recorded communication or by in-person or telephone contact if:</p> <ol style="list-style-type: none">(1) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer;(2) the solicitation involves coercion, duress, harassment, fraud, overreaching, intimidation, or undue influence; or(3) the prospective client is known to the lawyer to be represented in connection with the matter concerning the solicitation by counsel, except where the prospective client has initiated the contact with the lawyer. <p>(f): same as MR (d).</p>
Rule 7.4	<p>Adds (e): [Transitional Provisions (December 31, 2002 – December 31, 2005)]</p>

	<p>(1) A lawyer who is currently certified as a Board Recognized Specialist in Tax Law under the Arkansas Plan of Specialization may communicate such fact through December 31, 2005.</p> <p>(2) The Arkansas Legal Specialization Transition Task Force shall discharge any administrative, supervisory, or other duties previously discharged by the Board of Legal Specialization or the Tax Speciality Committee that may arise during the transition period. No new specialists shall be recognized under the Arkansas Plan of Specialization.</p>
Rule 7.5	Identical
Rule 7.6	Did not adopt.
Rule 8.1	Identical
Rule 8.2	Identical
Rule 8.3	<p>(a): uses “having knowledge” after “A lawyer.”</p> <p>(b): uses “having knowledge” after “A lawyer.”</p> <p>(c) ends after “1.6.”</p> <p>Adds: (d) This rule shall not apply to a member of the Lawyer Assistance Committee ("the Committee") of the Arkansas Lawyer Assistance Program ("ALAP") or a volunteer serving pursuant to Rule 4 of the Rules of ALAP regarding information received in one's capacity as a Committee member or volunteer, acting in good faith, unless it appears to said member or volunteer that the attorney in question, after entry into the ALAP, is failing to desist from said violation, or is failing to cooperate with a program of assistance to which said attorney has agreed, or is engaged in the sale of a controlled substance or theft of property constituting a felony under Arkansas law, or the equivalent thereof if the offense is not within the State's jurisdiction.</p> <p>(e) Except as provided by the preceding subsection (d), and Rules 7 (B) and 10 of the Rules of ALAP, no information received, gathered, or maintained by the Committee, its members or volunteers, or by an employee of the ALAP in connection with the work of the Committee may be disclosed to any person nor be subject to discovery or subpoena in any administrative or judicial proceeding, except upon the express written release of the subject attorney. However, the Committee may refer any attorney to a professional assistance entity, and may, in good faith, communicate information to the entity in connection with the referral. If information obtained by a member of the Committee, a volunteer, or an employee of the ALAP gives rise to reasonable suspicion of a direct threat to the health or safety of the subject attorney or other person, then the obligation of confidentiality set forth in this subsection (e) shall not apply, and the Committee member, volunteer, or ALAP employee may make such communications as are necessary for the purpose of avoiding or preventing said threat.</p>
Rule 8.4	Identical
Rule 8.5	Identical

As of April 14, 2006

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.