Comparison of Newly Adopted Illinois Rules of Professional Conduct with ABA Model Rules

	ILLINOIS New rules as adopted by Illinois Supreme Court to be effective 1/1/2010. Variations from the Model Rules are noted. Rules only; comment comparison not included.
Preamble	[6] Does not add: from "a lawyer should be mindful" to "in the public interest;" [6A] Adds: "It is also the responsibility of those licensed as officers of the court to use their training, experience, and skills to provide services in the public interest for which compensation may not be available. It is the responsibility of those who manage law firms to create an environment that is hospitable to the rending of a reasonable amount of uncompensated service but lawyers practicing in that firm. Service in the public interest may take many forms. These include but are not limited to *pro bono* representation of persons unable to pay for legal services and assistance in the organized bar's efforts at law reform. An individual lawyer's efforts in these areas is evidence of the lawyer's good character and fitness to practice law, and the efforts of the bar as a whole are essential to the bar's maintenance of professionalism. To help monitor and quantify the extent of these activities, and to encourage an increase in the delivery of legal services to persons of limited means, Illinois Supreme Court Rule 756(f) requires disclosure with each lawyer's annual registration with the Illinois Attorney Registration and Disciplinary Commission of the approximate amount of his or her *pro bono* legal service and the approximate amount of qualified monetary contributions. See also Committee Comment (June 14, 2006) to Illinois Supreme Court Rules 745(f);" [6B] adds: The absence from the Illinois Rules of a counterpart to ABA Model Rule 6.1 regarding *pro bono* and public service should not be interpreted as limiting the responsibility of lawyers to render uncompensated service in the public interest. Rather, the rationale is that this responsibility is not appropriate for disciplinary rules because it is not possible to articulate an appropriate disciplinary standard regarding *pro bono* and public service.
Scope	[14] adds "and the Preamble and Scope" to last sentence of paragraph, beginning with "Comments;" [21] adds "and are instructive and not directive" after "provide general orientation."
Rule 1.0	Same
Rule 1.1	Same
Rule 1.2	(e) Adds: "After accepting employment on behalf of a client, a lawyer shall not thereafter delegate to another lawyer not in the lawyer's firm the responsibility for performing or completing that employment, without the client's informed consent."
Rule 1.3	Same
Rule 1.4	Same
Rule 1.5	(e)(1) Adds: "if the primary service performed by one lawyer is the referral of the

	client to another lawyer and" after "performed by each lawyer, or;" Also changes "joint responsibility" to "joint financial responsibility."
Rule 1.6	(a) Adds at the end of paragraph, "or required by paragraph (c);" (b)(1) Is changed to: "to prevent the client from committing a crime in circumstances other than those specified in paragraph (c); (b)(2) Deletes "a crime or;" Adds (c): "A lawyer shall reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent reasonably certain death or substantial bodily harm;" Adds (d): "Information received by a lawyer participating in a meeting or proceeding with a trained intervener or panel of trained interveners of an approved lawyers' assistance program, or in an intermediary program approved by a circuit court in which nondisciplinary complaints against judges or lawyers can be referred, shall be considered information relating to the representation of a client for purposes of these Rules."
Rule 1.7	(b)(4) Deletes "confirmed in writing" at the end of the paragraph.
Rule 1.8	(a)(2) Changes "advised" to "informed;" Changes "writing of…seek" to "writing that the client may seek;" Adds at the end of the paragraph, "is given a reasonable opportunity to do so; and."
Rule 1.9	(a) Deletes "confirmed in writing;" (b)(2) Deletes "confirmed in writing."
Rule 1.10	(d) Adds at the end, "and with former judges, arbitrators, mediators or other third-party neutrals is governed by Rule 1.12;" Adds (e): "When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule 1.9 unless the personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom."
Rule 1.11	Deletes "confirmed in writing" in paragraphs (a)(2) and (d)(2)(ii).
Rule 1.12	(a) Deletes "confirmed in writing."
Rule 1.13	(b) Changes "obligation to the organization, or a violation" to: "organization, or a crime, fraud or other violation;" (c)(1) Changes "violation" to "crime or fraud;" (2)(d) Changes in two places "violation" to "crime, fraud or other violation."
Rule 1.14	Same
Rule 1.15	(a) Adapts "[five years]" (c) Substitutes "in" for "into; inserts between "account" and "legal fees": "funds received to secure payment of;" changes "earned or expenses" to "earned and expenses; " Adds at end of (c): "Funds received as a fixed fee, a general retainer, or an advance payment retainer shall be deposited in the lawyer's general account or other account belonging to the lawyer. An advance payment retained may be used only when necessary to accomplish some purpose for the client that cannot be accomplished by using a security retainer. An agreement for an advance payment retainer shall be in a writing signed by the client that uses the term "advance payment retainer" to describe the retainer, and states the following:

	(1) the special purpose for the advance payment retainer and an explanation why it is advantageous to the client; (2) that the retainer will not be held in a client trust account, that it will become the property of the lawyer upon payment, and that it will be deposited in the lawyer's general account; (3) the manner in which the retainer will be applied for services rendered and expenses incurred; (4) that any portion of the retainer that is not earned or required for expenses will be refunded to the client; (5) that the client has the option to employ a security retainer, provided, however, that if the lawyer is unwilling to represent the client without receiving an advance payment retainer, the agreement must so state and provide the lawyer's reasons for that condition;" Adds paragraph (f): All nominal or short-term funds of clients or third persons held by a lawyer or law firm, including advances for costs and expenses, and funds belonging in part to a client or third person and in part presently or potentially to the lawyer or law firm, shall be deposited in one or more pooled interest- or dividend-bearing trust accounts known as Interest on Lawyers' Trust Accounts ("IOLTA accounts"), established with an eligible financial institution selected by a lawyer or law firm in the exercise of ordinary prudence, and with the Lawyers Trust Fund of Illinois designated as income beneficiary. Each IOLTA account shall comply with the following provisions: (1) Each lawyer or law firm in receipt of nominal or short-term client funds shall establish one or more IOLTA accounts with an eligible financial institution authorized by federal or state law to do business in the state of Illinois. An eligible financial institution is a bank or a savings bank insured by the Federal Deposit Insurance Corporation or an open-end investment company registered with the Securities and Exchange Commission, which offers IOLTA accounts within the requirements of this Rule as administered by the Lawyers Trust Fund of Illinois. (2) Eligible institutions shall maintain IOLTA accounts that pay the highest interest rate or dividend available from the institution to its non-IOLTA account customers when IOLTA accounts meet or exceed the same minimum balance or other account eligibility guidelines, if any. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA accounts, eligible institutions may consider factors, in addition to the IOLTA account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that such factors do not discriminate between IOLTA accounts and accounts of non-IOLTA customers, and that these factors do not include that the account is an IOLTA account. (3) An IOLTA account that meets the highest comparable rate or dividend standard set forth in paragraph (f)(2) must use one of the identified account options as an IOLTA account, or pay the equivalent yield on an existing IOLTA account in lieu of using the highest-yield bank product: (a) a checking account paying preferred interest rates, such as

	money market or indexed rates, or any other suitable interest-bearing deposit account offered by the eligible institution to its non-IOLTA customers. (b) for accounts with balances of $100,000 or more, a business checking account with automated investment feature, such as an overnight sweep and investment in repurchase agreements fully collateralized by U.S. Government securities as defined in paragraph (h). (c) for accounts with balances of $100,000 or more, a money market fund with, or tied to, check-writing capacity, that must be solely invested in U.S. Government securities or securities fully collateralized by U.S. Government securities, and that has total assets of at least $250 million. (4) As an alternative to the account options in paragraph (f)(3), the financial institution may pay a "safe harbor" yield equal to 70% of the Federal Funds Target Rate or 1.0%, whichever is higher. (5) Each lawyer or law firm shall direct the eligible financial institution to remit monthly earnings on the IOLTA account directly to the Lawyers Trust Fund of Illinois. For each individual IOLTA account, the eligible financial institution shall provide: a statement transmitted with each remittance showing the name of the lawyer or law firm directing that the remittance be sent; the account number; the remittance period; the rate of interest applied; the account balance on which the interest was calculated; the reasonable service fee(s) if any; the gross earnings for the remittance period; and the net amount of earnings remitted. Remittances shall be sent to the Lawyers Trust Fund electronically unless otherwise agreed. Fees in excess of the earnings accrued on an individual IOLTA account for any month shall not be taken from earnings accrued on other IOLTA accounts or from the principal of the account. (6) Each lawyer or law firm shall deposit into such interest-bearing trust accounts all clients' funds which are nominal in amount or are expected to be held for a short period of time. (7) The decision as to whether funds are nominal in amount or are expected to be held for a short period of time rests exclusively in the sound judgment of the lawyer or law firm, and no charge of ethical impropriety or other breach of professional conduct shall attend a lawyer's or law firm's judgment on what is nominal or short term." Adds paragraph (g): "Ordinarily, in determining the type of account into which to deposit particular funds for a client or third person, a lawyer or a law firm shall take into consideration the following factors: (1) the amount of interest which the funds would earn during the period they are expected to be held and the likelihood of delay in the relevant transaction or proceeding; (2) the cost of establishing and administering the account, including the cost of the lawyer's services; (3) the capability of the financial institution, through subaccounting, to

	calculate and pay interest earned by each client's funds, net of any transaction costs, to the individual client." Adds paragraph (h): "Definitions (1) "IOLTA account" means an interest- or dividend-bearing trust account benefitting the Lawyers Trust Fund of Illinois, established in an eligible institution for the deposit of nominal or short-term funds of clients or third persons as defined in paragraph (f) and from which funds may be withdrawn upon request as soon as permitted by law. (2) "Money market fund" is an investment company registered under the Investment Company Act of 1940, as amended, that is qualified to hold itself out to investors as a money market fund or the equivalent of a money market fund under Rules and Regulations adopted by the Securities and Exchange Commission pursuant to said Act. (3) "U.S. Government securities" refers to U.S. Treasury obligations and obligations issued by or guaranteed as to principal and interest by any AAA-rated United States agency or instrumentality thereof. A daily overnight financial repurchase agreement ("repo") may be established only with an institution that is deemed to be "well capitalized" or "adequately capitalized" as defined by applicable federal statutes and regulations. (4) "Safe harbor" is a yield that if paid by the financial institution on IOLTA accounts shall be deemed as a comparable return in compliance with this Rule. Such yield shall be calculated as 70% of the Federal Funds Target Rate as reported in the Wall Street Journal on the first business day of the calendar month. (5) "Allowable reasonable fees" for IOLTA accounts are per-check charges, per deposit charges, a fee in lieu of a minimum balance, federal deposit insurance fees, automated investment ("sweep") fees, and a reasonable maintenance fee, if those fees are charged on comparable bank accounts maintained by non-IOLTA depositors. All other fees are the responsibility of, and may be charged to, the lawyer or law firm maintaining the IOLTA account." Adds paragraph (i): "In the closing of a real estate transaction, a lawyer's disbursement of funds deposited but not collected shall not violate his or her duty pursuant to this Rule 1.15 if, prior to the closing, the lawyer has established a segregated Real Estate Funds Account (REFA) maintained solely for the receipt and disbursement of such funds, has deposited such funds into a REFA, and: (1) is acting as a closing agent pursuant to an insured closing letter for a title insurance company licensed in the State of Illinois and uses for such funds a segregated REFA maintained solely for such title insurance business; or (2) has met the "good-funds" requirements. The good-funds requirements shall be met if the bank in which the REFA was established has agreed in a writing directed to the lawyer to honor all disbursement orders drawn on that REFA for all transactions up to a specified dollar amount not less than the total amount being deposited in good funds. Good funds shall

	include only the following forms of deposits: (a) a certified check, (b) a check issued by the State of Illinois, the United States, or a political subdivision of the State of Illinois or the United States, (c) a cashier's check, teller's check, bank money order, or official bank check drawn on or issued by a financial institution insured by the Federal Deposit Insurance Corporation or a comparable agency of the federal or state government, (d) a check drawn on the trust account of any lawyer or real estate broker licensed under the laws of any state, (e) a personal check or checks in an aggregate amount not exceeding $5,000 per closing if the lawyer making the deposit has reasonable and prudent grounds to believe that the deposit will be irrevocably credited to the REFA, (f) a check drawn on the account of or issued by a lender approved by the United States Department of Housing and Urban Development as either a supervised or a nonsupervised mortgagee as defined in 24 C.F.R. §202.2, (g) a check from a title insurance company licensed in the State of Illinois, or from a title insurance agent of the title insurance company, provided that the title insurance company has guaranteed the funds of that title insurance agent. Without limiting the rights of the lawyer against any person, it shall be the responsibility of the disbursing lawyer to reimburse the trust account for such funds that are not collected and for any fees, charges and interest assessed by the paying bank on account of such funds being uncollected."
Rule 1.16	Same
Rule 1.17	Replaces "a law practice, or an area of law" with "and the estate of a deceased lawyer or the guardian or authorized representative of a disable lawyer may sell, a law;" (a) Replaces everything after "practice of law" with "in the geographic area in which the practice has been conducted;" (b) Deletes "or the entire area of practice."
Rule 1.18	(d)(1) Deletes "confirmed in writing;" Adds to end of paragraph, "that lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom;" Deletes (d)(2)(i) and (ii).
Rule 2.1	Same
Rule 2.2	Reserved
Rule 2.3	Same
Rule 2.4	(b) Deletes "When the lawyer knows…in the matter, the lawyer;" Changes "the lawyers shall explain the difference" to "and shall explain to them the difference."
Rule 3.1	Same
Rule 3.2	Same
Rule 3.3	Same
Rule 3.4	Same

Rule 3.5	Same
Rule 3.6	(a) Replaces "and will have…an adjudicative" with "and would pose a serious and imminent threat to the fairness of an adjudicative."
Rule 3.7	Same
Rule 3.8	Adds: "The duty of a public prosecutor is to seek justice, not merely to convict" before "The prosecutor…shall;" Replaces "that have a substantial likelihood" with "pose a serious and imminent threat;" Deletes (g) and (h).
Rule 3.9	Deleted
Rule 4.1	Same
Rule 4.2	Same
Rule 4.3	Same
Rule 4.4	(b) Deletes "or reasonably should know."
Rule 5.1	Deleted
Rule 5.2	Same
Rule 5.3	Same
Rule 5.4	Same
Rule 5.5	Same
Rule 5.6	Same
Rule 5.7	Reserved
Rule 6.1	Reserved
Rule 6.2	Same
Rule 6.3	Adds "not-for-profit" before "legal services organization."
Rule 6.4	Same
Rule 6.5	Same
Rule 7.1	Same
Rule 7.2	(2) Deletes "or qualified" after not-for-profit; deletes second sentence, "A qualified lawyer…regulatory authority;" (4)(c) Capitalizes "Rule."
Rule 7.3	Same
Rule 7.4	(b) Adds at beginning of paragraph, "The Supreme Court of Illinois does not recognize certifications of specialties in the practice of law, nor does it recognize certifications of expertise in any phase of the practice of law by any agency, governmental or private, or by any group, organization or association;" Deletes (c) and (d); Adds paragraph (c): "Except when identifying certificates, awards or recognitions issued to him or her by an agency or organization, a lawyer may not use the terms "certified," "specialist," "expert," or any other, similar terms to describe his qualifications as a lawyer or his qualifications in any subspecialty of the law. If

	such terms are used to identify any certificates, awards or recognitions issued by any agency, governmental or private, or by any group, organization or association, the reference must meet the following requirements: (1) the reference must be truthful and verifiable and may not be misleading in violation of Rule 7.1; (2) the reference must state that the Supreme Court of Illinois does not recognize certifications of specialties in the practice of law and that the certificate, award or recognition is not a requirement to practice law in Illinois."
Rule 7.5	Same
Rule 7.6	Reserved
Rule 8.1	(b) Replaces "Rules 1.6" with "these Rules or by law."
Rule 8.2	Same
Rule 8.3	(a) Replaces "the Rules of Professional Conduct…in other respects" with "Rule 8.4(b) or Rule 8.4(c);" (b) Replaces "Rules 1.6" with "the attorney-client privilege or by law;" Adds "or an intermediary program approved by a circuit court in which nondisciplinary complaints against judges or lawyers can be referred;" Adds (d): "A lawyer who has been disciplined as a result of a lawyer disciplinary action brought before any body other than the Illinois Attorney Registration and Disciplinary Commission shall report that fact to the Commission."
Rule 8.4	(f) Adds, at end of paragraph: "Nor shall a lawyer give or lend anything of value to a judge, official, or employee of a tribunal, except those gifts or loans that a judge or a member of the judge's family may receive under Rule 65(C)(4) of the Illinois Code of Judicial Conduct. Permissible campaign contributions to a judge or candidate for judicial office may be made only by check, draft, or other instrument payable to or to the order of an entity that the lawyer reasonably believes to be a political committee supporting such judge or candidate. Provision of volunteer services by a lawyer to a political committee shall not be deemed to violate this paragraph." Adds paragraph (g): "present, participate in presenting, or threaten to present criminal or professional disciplinary charges to obtain an advantage in a civil matter;" Adds paragraph (h): "enter into an agreement with a client or former client limiting or purporting to limit the right of the client or former client to file or pursue any complaint before the Illinois Attorney Registration and Disciplinary Commission;" Adds paragraph (i): "avoid in bad faith the repayment of an education loan guaranteed by the Illinois Student Assistance Commission or other governmental entity. The lawful discharge of an education loan in a bankruptcy proceeding shall not constitute bad faith under this paragraph, but the discharge shall not preclude a review of the lawyer's conduct to determine if it constitutes bad faith;"

	Adds paragraph (j): "violate a federal, state or local statute or ordinance that prohibits discrimination based on race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status by conduct that reflects adversely on the lawyer's fitness as a lawyer. Whether a discriminatory act reflects adversely on a lawyer's fitness as a lawyer shall be determined after consideration of all the circumstances, including: the seriousness of the act; whether the lawyer knew that the act was prohibited by statute or ordinance; whether the act was part of a pattern of prohibited conduct; and whether the act was committed in connection with the lawyer's professional activities. No charge of professional misconduct may be brought pursuant to this paragraph until a court or administrative agency of competent jurisdiction has found that the lawyer has engaged in an unlawful discriminatory act, and the finding of the court or administrative agency has become final and enforceable and any right of judicial review has been exhausted. Adds paragraph (k): "if the lawyer holds public office: (1) use that office to obtain, or attempt to obtain, a special advantage in a legislative matter for a client under circumstances where the lawyer knows or reasonably should know that such action is not in the public interest; (2) use that office to influence, or attempt to influence, a tribunal to act in favor of a client; or (3) represent any client, including a municipal corporation or other public body, in the promotion or defeat of legislative or other proposals pending before the public body of which such lawyer is a member or by which such lawyer is employed."
Rule 8.5	Same