

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

	<b>KENTUCKY</b>
	New rules as adopted by Kentucky Supreme Court to be effective 7/15/09. Variations from the Model Rules are noted. Rules only; comment comparison not included.
Preamble	Adds to beginning: <i>I. The Preamble and this note on Scope provide general orientation. The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule. The Comments are intended as guides to interpretation, but the text of each Rule is authoritative;</i> Changes numbering throughout to roman numerals.
Scope	Same as MR but changes numbering throughout.
Rule 1.0	<ul style="list-style-type: none"> <li>• “Tribunal:” Adds “disciplinary or admissions entity created by the Supreme Court” after “administrative agency.”</li> </ul>
Rule 1.1	Same as MR
Rule 1.2	Same as MR
Rule 1.3	Same as MR
Rule 1.4	Same as MR
Rule 1.5	(a)(2) Deletes “if apparent to the client;” (c) Adds after sentence ending with “or other law:” “Such a fee must meet the requirements of Rule 1.5(a);” (d)(1) Changes “alimony or support” to “alimony, maintenance, support, or property settlement;” Adds to end of paragraph, “provided this does not apply to liquidated sums in arrearage; or;” (e)(2) Deletes “including...receive;” Adds (f): <i>(f) A fee may be designated as a non-refundable retainer. A non-refundable retainer fee agreement shall be in a writing signed by the client evidencing the client's informed consent, and shall state the dollar amount of the retainer, its application to the scope of the representation and the time frame in which the agreement will exist.</i>
Rule 1.6	(b)(3) is almost identical to MR (b)(5), but KY adds “including a disciplinary proceeding” after “proceeding” (b)(4) is identical to MR (b)(6) Deletes (b)(2) and (b)(3). <b>Does not adopt 2003 Task Force changes</b>
Rule 1.7	(b)(4): adds to end “The consultation shall include an explanation of the implications of the common representation and the advantages and risks involved.”
Rule 1.8	Same as MR
Rule 1.9	Same as MR
Rule 1.10	Combines (a) and (a)(1), and deletes (a)(2), and paragraphs (i), (ii), and (iii).

	<p>Adds new (d):  “(d) A firm is not disqualified from representation of a client if the only basis for disqualification is representation of a former client by a lawyer presently associated with the firm, sufficient to cause that lawyer to be disqualified pursuant to Rule 1.9 and:  (1) the disqualified lawyer is screened from any participation in the matter and is apportioned no specific part of the fee therefrom; and  (2) written notice is given to the former client.”  Kentucky Rules (e) is identical to MR (d).</p> <p>Comments:  Adopts MR [1] through [6]  [2] is almost identical to MR, but refers to Paragraph (a) instead of (a)(1) and deletes reference to 1.10(a)(2)  [5] is almost identical to MR, but refers to Rule 1.9, instead of Rule 1.9(c)  Adds as [7]:  Rule 1.10(d) removes the imputation in some cases when the disqualified lawyer is screened. See Rule 1.0 (k) and Comments [8] – [10] for minimum requirements of screening.  [8] and [9] are identical to MR [11] and [12]  Does not adopt [7] through [10]</p>
Rule 1.11	(c)(2)(ii) replaces “lawyer” with “attorney.”
Rule 1.12	(b) Changes “lawyer” to “attorney;” Adds after “third-party neutral:” “This rule does not prohibit an arbitrator, mediator, or third-part neutral from negotiating future cases.”
Rule 1.13	Same as MR <b>Adopts 2003 Task Force changes</b>
Rule 1.14	(a) Adds “age” after “minority”
Rule 1.15	Same as MR
Rule 1.16	Same as MR
Rule 1.17	<p>Changes “an area of” to “a field of;”  (a) is similar to MR (a) but divides language after “engage in” into three subparagraphs:  (a)(1): “the private practice of law, or;”  (a)(2): “the field(s) of practice sold, or;”  (a)(3): “the practice of law in the geographic area in which the practice has been conducted, all as the seller and purchaser may agree, all as the seller and purchaser may agree;”  (b) changes “entire area” to “entire field;”  (e) is similar to the last paragraph of MR (c), but replaces first sentence with:  “If a client with active matters cannot be given notice, the file(s) of that client may be transferred to the purchaser only upon entry of an order by the circuit court in the county of the principal place of business of the seller;” adds to end of paragraph: “Notification of the entry of the order shall be sent to the Kentucky Bar Association;”  Adds (f):</p>

	<i>(f) In the event the sale includes files that are closed matters, and the attorney has mailed notice to the client's last known address, the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of the date the notice was sent.</i>
Rule 1.18	Same as MR
Rule 2.1	Same as MR
Rule 2.3	Same as MR
Rule 2.4	Same as MR
Rule 3.1	Same as MR
Rule 3.2	Same as MR
Rule 3.3	Same as MR
Rule 3.4	(b) Adds "knowingly" to beginning; Adds (f): (f) present, participate in presenting, or threaten to present criminal or disciplinary charges solely to obtain an advantage in any civil or criminal matter; or (g) Same as MR (f); (g)(1) Replaces language after (f)(1) and replaces with: "or agent who supervises, directs or regularly consults with the client concerning the matter or has authority to obligate the client with respect to the matter."
Rule 3.5	DCR 3.130 (3.5) Impartiality and Decorum of the Tribunal Adds heading: "SCR 3.130(3.5) shall read:" (b) replaces "during the proceeding unless authorized to do so" with "as to the merits of the cause except as permitted" (c)(1) adds "local rule" after "law"
Rule 3.6	Same as MR but adds: SCR 3.130 to title Adds heading: "SCR 3.130(3.6) shall read"
Rule 3.7	Same as MR
Rule 3.8	Does not adopt MR (c); (c) is the same as MR (d); (d) is the same as MR (e); (e) is the same as MR (f); Does not adopt MR (g) or (h).
Rule 3.9	Same as MR
Rule 4.1	In text of Rule, moves language after "a lawyer" to beginning of subparagraph (a); (b) Replaces language with: <i>(b) if a false statement of material fact or law has been made, shall take reasonable remedial measures to avoid assisting a fraudulent or criminal act by a client including, if necessary, disclosure of a material fact, unless prohibited by Rule 1.6.</i>
Rule 4.2	Same as MR

Rule 4.3	Deletes language after “unrepresented person” and replaces with “The lawyer may suggest that the unrepresented person secure counsel.”
Rule 4.4	(b) Replaces language after “sent shall” with: <i>(1) refrain from reading the document,</i> <i>(2) promptly notify the sender, and</i> <i>(3) abide by the instructions of the sender regarding its disposition.</i>
Rule 5.1	Same as MR
Rule 5.2	Does not adopt
Rule 5.3	(c) Adds “only” before “if.”
Rule 5.4	Does not adopt (a)(4).
Rule 5.5	(b)(1) Adds “or maintain” after “establish;” deletes “systematic and continuous;” (c) Deletes “if such services” and replaces with “and;” Does not adopt (c)(1) but adds instead: <i>(1) comply with SCR 3.030(2), or they do not require compliance with SCR 3.030(2) but are legal services before an administrative tribunal;</i> <i>or</i> Does not adopt MR(c)(2); (c)(2) is similar to MR (c)(3) but deletes “pending...dispute resolution” and ends: “for a client, or prospective client pursuant to Rule 1.18, if the services arise out of, or are reasonably related to, the lawyer’s practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission pursuant to SCR 3.030(2); or;” (c)(3) is similar to MR (c)(4) but changes “practice in a jurisdiction” to “client in the jurisdiction” and adds “to practice” to end; Does not adopt MR (d)(1) but adds instead: <i>(1) comply with SCR 2.111 regarding a Limited Certificate of Admission to Practice Law in this jurisdiction; or</i> Adds (e): <i>(e) A lawyer authorized to provide legal services under this Rule shall be subject to the Kentucky Rules of Professional Conduct and shall comply with SCR 3.030(2) or, if such legal services do not require compliance with that Rule, the lawyer must actively participate in, and assume responsibility for, the representation of the client.</i>
Rule 5.6	(a) Adds “or” after “partnership.”
Rule 5.7	Does not adopt
Rule 6.1	Does not adopt
Rule 6.2	Does not adopt
Rule 6.3	Does not adopt
Rule 6.4	Same as MR
Rule 6.5	Same as MR
Rule 7.1	Does not adopt

Rule 7.2	Does not adopt
Rule 7.3	<p>KY Rule 7.09 is similar to MR Rule 7.3.</p> <p>(1) is equivalent to MR (a) but with changes wording to: (1) No lawyer shall directly or through another person, by in person, live telephone, or real-time electronic means, initiate contact or solicit professional employment from a potential client unless:</p> <p>(1)(a) is similar to MR (a)(2); Adds (1)(b): “the lawyer has a current attorney-client relationship with the potential client;” Adds to end of (1): <i>This Rule shall not prohibit response to inquiries initiated by persons who may become potential clients at the time of any other incidental contact not designed or intended by the lawyer to solicit employment.</i></p> <p>(2) is similar to MR (b) but changes “prospective” to “potential” throughout and deletes clause, “by written...electronic contact” and references paragraph (1) instead of (a); (3) is similar to MR (c) but changes “Advertising Material’ on the outside envelope” with “THIS IS AN ADVERTISEMENT’ in all capital letters prominently displayed in type at least as large as the type in the body of the communication;” deletes the rest of the paragraph and replaces with: <i>unless: (a) the lawyer has an immediate family relationship with the potential client; or (b) the lawyer has a current attorney-client relationship with the potential client. Further, in each such written or recorded or electronic communication the envelope, document, or container, by which such communication is transmitted shall contain the word “ADVERTISEMENT” in all capital letters, and in type large enough to be conspicuous and placed in a conspicuous location on the same side of the envelope, document, or container upon which the lawyer’s name and/or address appears. If an electronic communication is sent by or on behalf of the lawyer to a potential client in a container or on a disc or other format on which words may appear, the outside of the container, or disc, or other format shall be marked as provided in this rule. If a recorded telephone, electronic, video, or digital communication is sent under this rule, a speaker must first recite the language “THE FOLLOWING IS AN ADVERTISEMENT” and shall further state at the end of the communication the language “THIS MESSAGE HAS BEEN AN ADVERTISEMENT”.</i></p> <p>Adds: (4) No communication pursuant to SCR 3.130(7.09)(3) shall be sent to those potential clients who have been involved in a disaster as defined in</p>

	<p><i>SCR</i>  <i>3.130(7.60) until thirty (30) days have elapsed from the occurrence of the disaster.</i></p>
Rule 7.4	<p>KY Rule 7.40 is similar to MR Rule 7.4;  Deletes “and Specialization” from title;  First paragraph is similar to MR (a) but adds to end:  <i>A lawyer who concentrates in, limits his or her practice to, or wishes to announce a willingness to accept cases in a particular field may advertise or publicly state that information in any manner otherwise permitted by these Rules. Any such advertisement or statement shall be strictly factual and shall not contain any form of the words “certified”, “specialist”, “expert”, or “authority”, except as follows:</i></p> <p>(1) is the same as MR (b);  (2) is similar to MR (c) but replaces “engaged in Admiralty practice” with “certified by an appropriate governmental agency;”  (3) is equivalent to MR (d) but changes wording to:  (3) A lawyer may state or imply that he or she is “certified”, a “specialist”,  an “expert” or “authority” in a particular field of law only if:  (3)(a) is similar to MR (d)(1) but replaces language following “state authority or” with: “by a national organization that the attorney demonstrates is qualified to grant such certification to attorneys who meet objective and consistently applied standards relevant to practice in a particular area of the law; and;”  (3)(b) is the same as MR (d)(2);  Adds:  <i>(3)(c) if the lawyer is licensed to practice law in Kentucky, the communication must state that Kentucky does not certify specialties in legal fields. The communication may occur only for as long as the lawyer remains so certified and in good standing.</i></p>
Rule 7.5	<p>(1) is similar to MR (a) but deletes language after “Rule 7.1;”  (2) is similar to MR (b) but deletes “or other professional designation;”  (3) is MR (c);  (4) is MR (d);  Adds:  <i>(5) The name of a lawyer who is suspended by the Supreme Court from the practice of law may not be used by the law firm in any manner until the lawyer is reinstated. A lawyer who has been permanently disbarred shall not be included in a firm name, letterhead, or any other professional designation or advertisement.</i></p>
Rule 7.6	Does not adopt
Rule 8.1	Same as MR
Rule 8.2	Does not adopt

Rule 8.3	<p>(a) Replaces “the appropriate professional authority” with “the Association’s Bar Counsel;”</p> <p>(b) Replaces language after “shall” with “report such violation to the Judicial Conduct Commission;”</p> <p>Does not adopt MR (c) but adds:</p> <p><i>(c) A lawyer is not required to report information that is protected by Rule 1.6 or by other law. Further, a lawyer or a judge does not have a duty to report or disclose information that is received in the course of participating in the Kentucky Lawyer Assistance Program or Ethics Hotline.</i></p> <p><i>(d) A lawyer acting in good faith in the discharge of the lawyer’s professional responsibilities required by paragraphs (a) and (b) or when making a voluntary report of other misconduct shall be immune from any action, civil or criminal, and any disciplinary proceeding before the Bar as a result of said report, except for conduct prohibited by Rule 3.4(f).</i></p> <p><i>(e) As provided in SCR 3.435, a lawyer who is disciplined as a result of a lawyer disciplinary action brought before any authority other than the Association shall report that fact to Bar Counsel.</i></p> <p><i>(f) As provided in SCR 3.166(2), a lawyer prosecuting a case against any member of the Association to a plea of guilty, conviction by judge or jury or entry of judgment, should immediately notify the Director of such event.</i></p>
Rule 8.4	Doesn’t adopt MR (d); (d) and (e) are the same as MR (e) and (f).
Rule 8.5	Same as MR

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