

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

	<p><b>MAINE</b></p> <p>New rules as adopted by Maine Supreme Court to be effective 8/1/09. Variations from the Model Rules are noted. Rules only; comment comparison not included.</p>
<p>Preamble</p>	<p><b><i>Preamble from the Maine Task Force on Ethics</i></b>  <i>[1] The Maine Supreme Judicial Court adopted these rules of professional responsibility to coordinate with the American Bar Association’s review of the Model Rules of Professional Conduct in 2000 and 2002. Maine’s acceptance of these rules maximizes conformity with those states embracing the ABA Model Rules and also preserves the integrity of the manner in which Maine lawyers practice law. The ABA Model Rules and the Maine Bar Rules involve the same core conduct. These rules follow the numbering system used in the ABA Model Rules and in states ratifying the ABA rules, and as much as possible, follow the language of the applicable ABA rules.</i>  <i>[1A] These Maine Rules of Professional Conduct are the product of Task Force study and recommendations, public comment and, as to the Rules themselves, review by the Maine Supreme Judicial Court. The Maine Supreme Judicial Court adopts these rules as edited and published here. The Preamble, Scope, Comments and Reporter’s Notes have not been specifically adopted by the Maine Supreme Judicial Court. The Preamble, Scope, Comments and Reporter’s Notes are published with the Rules for background information and illustration.</i>  <i>[2] In some instances language found in the former Maine Bar rules is imported into a particular provision. In other instances additional regulatory principles are introduced into a rule. Some rules do not follow the ABA rules, for example Rule 1.6 Confidentiality of Information. Therefore, it is critically important that the user of these Maine Rules of Professional Conduct understand that the Maine Rules of Professional Conduct are not identical to the ABA Model Rules.</i>  <i>[2A] The Maine Task Force was instructed to preserve the structure of the ABA Model Rules (which include Comments) when possible. If provisions of the ABA Model Rules were not incorporated into these Maine Rules of Professional Conduct, those sections appear as “[Reserved]” sections or Comments. Otherwise, topical and substantive provisions of these Maine Rules of Professional Conduct appear in the same numbered Rule and Comment as the ABA Model Rules.</i>  <i>[3] [Reserved]</i>  <i>[4] [Reserved]</i>  <i>[5] [Reserved]</i>  <i>[6] [Reserved]</i>  <i>[7] [Reserved]</i>  <i>[7A] In addition to the Maine Rules of Professional Conduct the Maine</i></p>

	<p><i>Supreme Judicial Court has promulgated two aspirational goals for lawyers. One addresses pro bono publico service. The second addresses the substance and style of lawyer advertising. These aspirational goals were found at Maine Bar Rule 2-A and 2-B, and are now found in Rule 6.1 (Pro bono service) and Rule 7.2-A (lawyer advertising) of these Rules.</i></p> <p>[8] [Reserved]          [9] [Reserved]          [10] [Reserved]          [11] [Reserved]          [12] [Reserved]          [13] [Reserved]          [14A] <i>The Maine Supreme Judicial Court has not adopted the Preamble, Comments or Reporter’s Notes. The Comments and Notes are published with the rules to provide background information and illustration.</i></p>
Scope	<p>[14] Adds to end: “The Reporter’s Notes are designed to elucidate and provide historical context for the recommendations of the Maine Task Force on Ethics;”</p> <p>[21] Changes language to:  <i>[21] The Comment and Reporter’s Notes accompanying each Rule explain and illustrate the meaning and purpose of the Rule. The Preamble provides general orientation. The Comments and Reporter’s Notes are intended as guides to interpretation. However, only the text of each Rule is authoritative to govern attorney conduct.”</i></p>
Rule 1.0	<p>Adds to beginning: “As used in these Rules, the following terms shall have the following meanings:”</p> <p>Changes “denotes” to “means” throughout;</p> <p>Replaces “when used in relation to” and “when used in reference to” with “when referring to;”</p> <ul style="list-style-type: none"> <li>• “Firm:” Adds “As used in these Rules, the following terms shall have the following meanings” after “to practice law;” deletes “employed” before “in a legal services organization;”</li> <li>• “Informed consent:” Adds to end: “Whether a client has given informed consent to representation shall be determined in light of the mental capacity of the client to give consent, the explanation of the advantages and risks involved provided by the lawyer seeking consent, the circumstances under which the explanation was provided and the consent obtained, the experience of the client in legal matters generally, and any other circumstances bearing on whether the client has made a reasoned and deliberate choice;”</li> <li>• “Writing:” Inserts “but not limited to” after “including.”</li> </ul>
Rule 1.1	Same as MR
Rule 1.2	<p>(a) Adds to beginning of third sentence: “Subject to the Rules with respect to Declining or Terminating Representation (Rule 1.16);”</p> <p>(c) Adds “after consultation” after “consent;” adds to end of paragraph:  <i>If, after consultation, the client consents, an attorney may enter a limited appearance on behalf of an otherwise unrepresented party</i></p>

	<p><i>involved in a court proceeding. A lawyer who signs a complaint, counterclaim, cross-claim or any amendment thereto that is filed with the court, may not thereafter limit representation as provided in this rule, without leave of court.</i></p> <p>Adds (d):</p> <p><i>(d) A lawyer, who under the auspices of a non-profit organization or a court-annexed program provides limited representation to a client without expectation of either the lawyer or the client that the lawyer will provide continuing representation in the matter, is subject to the requirements of Rules 1.7, 1.9, 1.10 and 1.11 only if the lawyer is aware that the representation of the client involves a conflict-of-interest.</i></p> <p>(e) Is the same as MR (d).</p>
Rule 1.3	Same as MR
Rule 1.4	(a)(5) Changes “limitation to the lawyer’s conduct” to “limitations set forth in the Maine Rules of Professional Conduct, or other law with respect to lawyers’ conduct;” adds “Maine” before “Rules.”
Rule 1.5	<p>(a) Adds middle sentence:</p> <p><i>A fee or charge for expenses is unreasonable when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee or expense is in excess of a reasonable fee or expense.</i></p> <p>(a)(4) Adds to beginning of paragraph, “the responsibility assumed;”</p> <p>Adds (a)(9) and (10):</p> <p><i>(9) whether the client has given informed consent as to the fee arrangement; and</i></p> <p><i>(10) whether the fee agreement is in writing.</i></p> <p>(c) Adds to end of paragraph, “A general form of Contingent Fee Agreement is attached to the comments to this rule;”</p> <p>Adds (d)(3):</p> <p><i>(3) any fee to administer an estate in probate, the amount of which is based on a percentage of the value of the estate.</i></p> <p>Does not adopt MR (e);</p> <p>Adds (e), (f), and (g):</p> <p><i>(e) A lawyer shall not divide a fee for legal services with another lawyer who is not a partner in or associate of the lawyer’s law firm or office unless:</i></p> <p><i>(1) after full disclosure, the client consents to the employment of the other lawyer and to the terms for the division of the fees, confirmed in writing; and</i></p> <p><i>(2) the total fee of the lawyers does not exceed reasonable compensation for all legal services they rendered to the client.</i></p> <p><i>(f) A lawyer may accept payment by credit card for legal services.</i></p> <p><i>(g) A lawyer practicing in this State shall submit, upon the request of the client, the resolution of any fee dispute in accordance with Rule 9.</i></p>

<p>Rule 1.6</p>	<p>(a) Separates paragraph into several subparagraphs starting after “unless:”            (i) “the client...consent”            (ii) adds “the lawyer reasonably believes that” before “disclosure is authorized in order to carry out the representation”            (iii) “the disclosure...paragraph (b)”            (b): replaces “information relating to the representation” with “a confidence or secret”            (b)(4): replaces “compliance with the Rules” with “professional obligations”            Adds (c) Before revealing information under paragraph (b) (1), (2), or (3), the lawyer must, if feasible, make a good-faith effort to counsel the client to prevent the harm and advise the client of the lawyer’s ability to reveal information and the consequences thereof. Before revealing information under paragraph (b)(5) or (6), in controversies in which the client is not a complainant or a party, the lawyer must, if feasible, make a good faith effort to provide the client with reasonable notice of the intended disclosure.            (d) As used in Rule 1.6, “confidence” refers to information protected by the attorney-client privilege under applicable law, and “secret” refers to other information relating to the representation if there is a reasonable prospect that revealing the information will adversely affect a material interest of the client or if the client has instructed the lawyer not to reveal such information.  <b>Adopts 2003 Task Force changes</b></p>
<p>Rule 1.7</p>	<p>(a)(1): Adds clause to end: “even if representation would not occur in the same matter or in substantially related matters”            (b)(1): replaces “will” with “would”            (b)(2) same as MR (b)(4)            MR (b)(2) or (3) are moved to new Paragraph (c):            (c) <i>Under no circumstances may a lawyer represent a client if:</i>                <b>(1) the representation is prohibited by law; (almost identical to MR (b)(2) but deletes “not”)</b>                <b>(2) the representation involves the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal. (almost identical to MR (b)(3) but changes “does not involve” to “involves”</b></p>
<p>Rule 1.8</p>	<p>Same as MR</p>
<p>Rule 1.9</p>	<p>(c)(1) and (2) are similar to MR, but replaces “information” with “confidences or secrets;”            Adds (d):                <i>(d) Matters are “substantially related” for purposes of this Rule if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client’s position in the subsequent matter.</i></p>
<p>Rule 1.10</p>	<p>Combines (a) and (a)(1), and deletes (a)(2), and paragraphs (i), (ii), and (iii).            (d) Adds to beginning of paragraph, “For purposes of Rule 1.10 only, “firm” does not include government agencies.”</p>

	<p>Comments:</p> <p>[1] Adds to end of paragraph:          “The term “firm” as used in Rule 1.10, however, does not include governmental entities.”</p> <p>[2] is almost identical to MR, but refers to Paragraph (a) instead of (a)(1) and deletes reference to 1.10(a)(2)</p> <p>[6] similar to MR, but inserts clause after second sentence:          “A client’s consent may be conditional: for example, the client’s consent to waiver of imputation may be conditioned on the law firm screening to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. See Rule 1.0(k) “Screened” and Comments 8, 9 and 10.”</p> <p>Comments [7] and [8] are identical to MR [11] and [12].</p> <p>Does not adopt [7] through [10]</p>
<p>Rule 1.11</p>	<p>(b)(2) is similar to MR, but changes wording to:  <i>(2) the appropriate governmental officer or agency gives its informed consent, confirmed in writing, to the representation.</i></p> <p>(d)(2) is similar to MR but moves substance of everything following “unless” to subparagraph (d)(2)(A);</p> <p>(d)(2)(A) is equivalent to last part of MR (d)(2) but adds “officer” or before “agency” and adds “to the representation” before “or;”</p> <p>Adds subparagraph (d)(2)(B):  <i>(B) under applicable law, no one is or by lawful delegation may be authorized to act in the lawyer’s stead in the matter.</i></p>
<p>Rule 1.12</p>	<p>(a) Deletes language after “third-party neutral;”</p> <p>Deletes (c)(2) and replaces with:  <i>(2) the parties and any appropriate tribunal gives their informed consent, confirmed in writing, describing the means by which compliance with the provisions of this rule will be achieved.</i></p>
<p>Rule 1.13</p>	<p>(b): Deletes “that” before “is likely to result;” deletes from “Unless the lawyer reasonably believes” to the end of the paragraph and adds:          In determining how to proceed, the lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer’s representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters, and any other relevant considerations. Any measures taken shall be designed to minimize disruption of the organization and the risk of revealing confidences and secrets to persons outside the organization. Such measures may include among others:</p> <ul style="list-style-type: none"> <li>(1) asking reconsideration of the matter;</li> <li>(2) advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization; and</li> <li>(3) referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral</li> </ul>

	<p>to the highest authority that can act in behalf of the organization as determined by applicable law.</p> <p>(c)(1) Deletes “or fails to address in a timely and appropriate manner”</p> <p>(c)(2) Replaces MR with:  “(2) likely to result in substantial injury to the organization, the lawyer may resign in accordance with Rule 1.16 and make such disclosures as are consistent with Rule 1.6, Rule 3.3, Rule 4.1 and Rule 8.3, but only to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.”</p> <p>(e) is identical to MR (f)</p> <p>Adds as (g):  “A lawyer who acts contrary to this Rule but in conformity with promulgated federal law shall not be subject to discipline under this Rule, regardless whether such federal law is validly promulgated.”</p> <p><b>Does not adopt 2003 Task Force changes</b></p>
Rule 1.14	Same as MR
Rule 1.15	Same as MR
Rule 1.16	(c) Adds “and rules” after “applicable law;” adds to end of paragraph: “This subsection (c) does not apply to the automatic withdrawal of a lawyer upon completion of a limited representation made pursuant to Rule 1.2.”
Rule 1.17	<p>Does not adopt MR (a) or (b);</p> <p>Adds:</p> <p><i>(a) The selling attorney or each attorney in the selling firm has retired, become disabled or has died; or the selling attorney or each attorney in the selling firm has ceased to engage in the private practice of law in the State of Maine.</i></p> <p><i>(b) If the seller is or was a solo practitioner, then the entire law practice must be sold as a single unit. If the seller is or was a law firm, then the entire practice of the firm must be sold as a single unit. The entire law practice, for purposes of this rule, shall mean all client files, for open and closed engagements, excepting only those cases in which a conflict-of-interest is present or may arise.</i></p> <p><i>(c) The purchaser, who must be registered with the Board as an active member of the Bar of the State of Maine, assumes the obligations of an attorney to the client or clients whose files are transferred.</i></p> <p>(d) and (d)(1) combined are equivalent to MR (c); The first three words of (d) are the same as the first three words of MR (c), adds “the following notices” to end of paragraph;” (1) is similar to language following “gives” in MR (c) but adds “and to the Board of Overseers” before “regarding;”</p> <p>(d)(1)(A) is similar to MR (c)(1) but adds to end: “including the name of the purchasing attorney or the names of the attorneys who practice within the purchasing firm;”</p> <p>(d)(1)(B) and (C) are the same as MR (c)(2) and (3);</p> <p>Adds (d)(1)(D):  <i>(D) the terms of any proposed change in the fee arrangement authorized by paragraph (e);</i></p>

	<p>Last paragraph of (d) is similar to the last paragraph of MR (c), except that it replaces “court having jurisdiction” with “single justice of the Maine Supreme Judicial Court, which shall not issue without the Board of Overseers of the Bar having been given notice and opportunity to be heard;”</p> <p>Adds (d)(2):</p> <p style="padding-left: 40px;"><i>(2) Further notice shall be given by publication in a newspaper of general circulation in each county in which seller has engaged in the practice of law, at least thirty days before the anticipated transfer of files. Such notice shall include the anticipated date of sale and identification of the purchasing lawyer or firm.</i></p> <p>(e) is the same as MR (d).</p>
Rule 1.18	Same as MR
Rule 2.1	Same as MR
Rule 2.3	(c) Changes “information...evaluation” to “confidences and secrets are.”
Rule 2.4	Same as MR
Rule 3.1	Adds “non-frivolous” before “basis” and deletes “that is not frivolous.”
Rule 3.2	Same as MR
Rule 3.3	<p>(2) Deletes and replaces with new (2):</p> <p style="padding-left: 40px;"><i>(2) misquote to a tribunal the language of a book, statute, ordinance, rule or decision or, with knowledge of its invalidity and without disclosing such knowledge, cite as authority, a decision that has been overruled or a statute, ordinance or rule that has been repealed or declared unconstitutional;</i></p> <p>(3) similar to MR but changes “the lawyer knows to be false” with “is false.”</p>
Rule 3.4	(d) Reserved.
Rule 3.5	<p>Deletes “A lawyer shall not:” before (a) and inserts this language at the beginning in sections (a), (b), and (d).</p> <p>(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.</p> <p>(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”</p> <p>(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.”</p> <p>Adds (4): <i>the communication is calculated to improperly influence the juror’s action in future jury service.</i></p>
Rule 3.6	<p>Does not adopt MR</p> <p><b>RULE 3.6 Trial Publicity</b></p> <p><i>A lawyer involved in the prosecution or defense of a criminal matter or in representing a party to a civil cause shall not make or participate in making any extra-judicial statement which poses a substantial danger of interference with the administration of justice.</i></p>

Rule 3.7	Same as MR
Rule 3.8	<p>Changes text of Rule to: “The prosecutor shall;”            (a) Adds “criminal or juvenile” before “charge;”            Adds:  <i>(b) make timely disclosure in a criminal or juvenile case to counsel for the defendant, or to a defendant without counsel, of the existence of evidence or information known to the prosecutor after diligent inquiry and within the prosecutor’s possession or control, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment;</i>  <i>(c) refrain from conducting a civil, juvenile, or criminal case against any person whom the prosecutor knows that the prosecutor represents or has represented as a client;</i>  <i>(d) refrain from conducting a civil, juvenile, or criminal case against any person relative to a matter in which the prosecutor knows that the prosecutor represents or has represented a complaining witness.</i></p> <p>Doesn’t adopt MR (b) through (h).</p>
Rule 3.9	<p>Adds to end:  <i>and Rules 4.1 through 4.4. This Rule only applies when a lawyer represents a client in connection with an official hearing or meeting of a governmental agency or a legislative body to which the lawyer or the lawyer’s client is presenting evidence or argument. It does not apply to representation of a client in a negotiation or other bilateral transaction with a governmental agency or in connection with an application for a license or other privilege or the client’s compliance with generally applicable reporting requirements, such as the filing of income-tax returns. Nor does it apply to the representation of a client in connection with an investigation or examination of the client’s affairs conducted by government investigators or examiners.</i></p>
Rule 4.1	Same as MR
Rule 4.2	<p>Title: adds “and Limited Representations” to end            (a): same as MR text            Adds:  <i>(b) An otherwise unrepresented party to whom limited representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this Rule, except to the extent the limited representation attorney provides other counsel written notice of a time period within which other counsel shall communicate only with the limited representation attorney.</i>  <i>(c) If a prosecutor knows a person is represented with respect to the matter under investigation:</i>  <i>(1) the prosecutor shall not communicate directly with that person absent consent of the other lawyer or a court order; and</i>  <i>(2) The prosecutor shall not extend, through any third person an offer</i></p>

	<p><i>to meet with the prosecutor or an offer to enter into plea negotiations with the prosecutor, or an offer of a plea agreement absent consent of the other lawyer or a court order.</i></p> <p><i>Communications by the prosecutor in the form of advice or instruction to law enforcement agents about a person a prosecutor knows is represented with respect to a matter under investigation are authorized by this Rule and are governed by the substantive law.</i></p>
Rule 4.3	Replaces “other than the advice to secure counsel” with “The lawyer may recommend that such unrepresented client secure counsel.”
Rule 4.4	<p>Replaces (b) with:</p> <p><i>(b) A lawyer who receives a writing and has reasonable cause to believe the writing may have been inadvertently disclosed and contain confidential information or be subject to a claim of privilege or of protection as trial preparation material.</i></p> <p><i>(1) shall not read the writing or, if he or she has begun to do so, shall stop reading the writing;</i></p> <p><i>(2) shall notify the sender of the receipt of the writing; and</i></p> <p><i>(3) shall promptly return, destroy or sequester the specified information and any copies.</i></p> <p><i>The recipient may not use or disclose the information in the writing until the claim is resolved, formally or informally. The sending or receiving lawyer may promptly present the writing to a tribunal under seal for a determination of the claim.</i></p>
Rule 5.1	Same as MR
Rule 5.2	Same as MR
Rule 5.3	Same as MR
Rule 5.4	<p>Does not adopt MR(a)(2) but adds a new (a)(2):</p> <p><i>(2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer;</i></p> <p>Adds to end of (a)(3):</p> <p><i>provided that the</i></p> <p><i>amounts paid to nonlawyer employees in addition to fixed salary,</i></p> <p><i>(i) are not based upon business brought to the law firm by such employees;</i></p> <p><i>(ii) are not based upon services performed by such employees in a particular case; and</i></p> <p><i>(iii) do not constitute the greater part of the total remuneration of such employees;</i></p>
Rule 5.5	(c) Adds “that arise out of or are reasonably related to the representation of an existing client” after “legal services.”
Rule 5.6	Same as MR
Rule 5.7	Same as MR

As of February 17, 2010

Rule 6.1	<p>Deletes second sentence, starting with “A lawyer should aspire;” adds subtitle, “<i>Aspirational Goals</i>” before sentence beginning with “In fulfilling;” adds to end of sentence “provide legal services without fee or expectations of fee to;”</p> <p>Does not have MR(a) but (1) and (2) is the same as MR (a)(1) and (a)(2);</p> <p>Does not have MR (b);</p> <p>(3) is similar to MR (b)(1) but deletes language before “individuals;”</p> <p>Does not adopt MR (b);</p> <p>(3) is similar to MR (b)(1);</p> <p>(4) is similar to MR (b)(3) but deletes language before “activities;”</p> <p>Does not adopt MR (b)(2);</p> <p>Last paragraph of Rule puts “should” before “contribute.”</p>
Rule 6.2	Same as MR
Rule 6.3	Same as MR
Rule 6.4	Changes “benefitted by” to “affected by.”
Rule 6.5	Same as MR
Rule 7.1	Same as MR
Rule 7.2	Same as MR
Rule 7.3	<p>(a) Replaces with:  <i>(a) A lawyer, in person, by live telephone, or by real-time electronic contact, shall not solicit professional employment from a non-commercial client if such solicitation involves or has substantial potential of harassing conduct, coercion, duress, compulsion, intimidation or unwarranted promises of benefits. The prospective client’s sophistication regarding legal matters; the physical, emotional state of the prospective non-commercial client; and the circumstances in which the solicitation is made are factors to be considered when evaluating the solicitation.</i></p> <p>(b) Combines MR (b) and (b)(1). Does not adopt (b)(2);</p> <p>(c) Reserved;</p> <p>Replaces first clause with “Subject to the prohibitions in paragraphs (a) and (b).”</p>
Rule 7.4	<p>(a) Changes language after “fields of law” to “concentrate or specialize in particular fields of law;”</p> <p>(d)(1) changes language after “state authority or” to “that has been accredited by the Maine Board of Overseers of the Bar; and.”</p>
Rule 7.5	Same as MR
Rule 7.6	Same as MR
Rule 8.1	Same as MR
Rule 8.2	Same as MR
Rule 8.3	<p>(a) Adds “Maine” before “Rules of Professional Conduct;”</p> <p>(c) Replaces language starting with “an approved” with: “the Maine Assistance Program for Lawyers, or an equivalent peer assistance program approved by a state’s highest court.”</p>

As of February 17, 2010

Rule 8.4	(a) Adds “Maine” before “Rules;” (b) Adds “or unlawful” before “act.”
Rule 8.5	Same as MR

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