

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

	MARYLAND
	<p>Rules as adopted by Maryland Supreme Court to be effective 7/1/05.</p> <p>Variations from the Model Rules are noted.</p> <p>Rules only; comment comparison not included.</p>
Preamble	Identical
Scope	[20], changes last MR sentence and adds new last sentence: Nevertheless, since the Rules do establish standards of conduct by lawyers in some circumstances, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct. <u>Nothing in this Preamble and Scope is intended to detract from the holdings of the Court of Appeals in <i>Post v. Bregman</i>, 349 Md. 142 (1998) and <i>Son v. Margolius, Mallios, Davis, Rider & Tomar</i>, 349 Md. 441 (1998).</u>
Rule 1.0	<p>retains definition of "consult" or "consultation"</p> <p>(d): "Firm" or "law firm" denotes:</p> <p style="padding-left: 40px;">(1) <u>an association of a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to formed for the practice of law; or</u></p> <p style="padding-left: 40px;">(2) lawyers employed in a legal services organization or the legal department of a corporation, <u>government</u> or other organization.</p> <p>adds as (h); "Law Firm. See Rule 1.0(d)."</p>
Rule 1.1	Identical
Rule 1.2	(a): replaces "as required by Rule 1.4" with "when appropriate"
Rule 1.3	Identical
Rule 1.4	does not include MR (a)(2)
Rule 1.5	<p>(c): 3rd sentence: changes "liable" to "responsible"</p> <p>(d)(1): adds "or custody of a child" after "divorce"; deletes "in lieu thereof" after "property settlement;" adds at the end: "or upon the amount of an award pursuant to Sections 8-201 through 213 of Family Law Article, Annotated Code of Maryland"</p> <p>(e)(2): changes "arrangement" to "joint representation"; deletes "including the share each lawyer will receive"</p>
Rule 1.6	<p>(b)(4) adds at the end: "a court order or other law."</p> <p>(b)(5) adds after "civil claim," "or disciplinary complaint"</p> <p>(b)(6) to comply with these Rules, a court order or other law.</p>
Rule 1.7	(a) and (b): deletes the word "concurrent"
Rule 1.8	<p>(a): deletes "or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client"</p> <p>(g): adds at the end of the 1st sentence: "or confirmed in writing on the record before a tribunal."</p> <p>(i)(2): adds at the beginning: "subject to Rule 1.5, " does not include MR (j)</p>

	(j) is MR (k)
Rule 1.9	Identical
Rule 1.10	adds as (c): When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which the newly associated 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	Identical
Rule 1.12	Identical
Rule 1.13	replaces MR (c) with: (c): When the organization's highest authority insists upon action, or refuses to take action, that is clearly a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization, the lawyer may take further remedial action that the lawyer reasonably believes to be in the best interest of the organization. Such action may include revealing information otherwise protected by Rule 1.6 only if the lawyer reasonably believes that: (1) the highest authority in the organization has acted to further the personal or financial interests of members of the authority which are in conflict with the interests of the organization; and (2) revealing the information is necessary in the best interest of the organization. Does not have MR (d) or (e)
Rule 1.14	Identical
Rule 1.15	(a): replaces the rest of the 2 nd sentences after the word "maintained," with "pursuant to Title 16, Chapter 600 of the Maryland Rules." (c): adds to beginning "Unless the client gives informed consent, confirmed in writing, to a different arrangement,"
Rule 1.16	(b)(4): deletes "taking," adds "or inaction" after "action"
Rule 1.17	(a) A lawyer or a law firm may sell or purchase <u>Subject to paragraph (b), a law practice, or an area of law practice, including goodwill, may be sold</u> if the following conditions are satisfied: (1) <u>Except in the case of death, disability, or appointment of the seller to judicial office, the entire practice that is the subject of the sale has been in existence at least five years prior to the date of sale;</u> (2) <u>The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms as an entirety to another lawyer or law firm; and</u> (3) <u>The seller gives Written notice to each has been mailed to the last known address of the seller's current clients regarding:</u> (A) the proposed sale; (B) <u>the terms of any proposed change in the fee arrangement;</u> (C) the client's right to retain other counsel, to take possession of the file, <u>and to obtain any funds or other property to which the client is entitled; and</u> (D) the fact that the client's consent to the transfer of the client's files <u>new representation</u> will be presumed if the client does not take any action or does not otherwise object within ninety (90) <u>sixty (60)</u> days of receipt

	<p><u>mailing</u> of the notice.</p> <p>(b) If a client cannot be given notice <u>required by paragraph (a)(3) is returned and the client cannot be located</u>, the representation of that client may be transferred to the purchaser only upon entry of by <u>an order so of a court of competent jurisdiction</u> authorizing by a court having jurisdiction <u>the transfer</u>. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file. Does not include MR (d)</p>
Rule 1.18	(d): Representation is permissible if both the affected client and the prospective client have given informed consent, confirmed in writing, or the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.
Rule 2.1	Identical
Rule 2.2	Identical
Rule 2.3	Identical
Rule 2.4	Identical
Rule 3.1	<p>A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and in fact for doing so that is not frivolous, which includes, <u>for example</u>, a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the <u>moving party's case</u> be established.</p>
Rule 3.2	Identical
Rule 3.3	<p>(a)(2): does not delete the old MR (a)(2) that was deleted in new MR. (a)(4), MR (a)(3): keeps old MR language. does not include new MR (b) (b), MR (c): keeps old MR language (c): does not delete old MR (c) that was deleted (and incorporated in new (b) in new MR (d) same as MR adds as (e): Notwithstanding paragraphs (a) through (d), a lawyer for an accused in a criminal case need not disclose that the accused intends to testify falsely or has testified falsely if the lawyer reasonably believes that the disclosure would jeopardize any constitutional right of the accused.</p>
Rule 3.4	Identical
Rule 3.5	<p>Rule is significantly different from MR: (a) A lawyer shall not: (1) seek to influence a judge, juror, prospective juror, or other official by means prohibited by law; (2) before the trial of a case with which the lawyer is connected, communicate outside the course of official proceedings with anyone known to the lawyer to be on the list from which the jurors will be selected for the trial of the case;</p>

	<p>(3) during the trial of a case with which the lawyer is connected, communicate outside the course of official proceedings with any member of the jury;</p> <p>(4) during the trial of a case with which the lawyer is not connected, communicate outside the course of official proceedings with any member of the jury about the case;</p> <p>(5) after discharge of a jury from further consideration of a case with which the lawyer is connected, ask questions of or make comments to a member of that jury that are calculated to harass or embarrass the juror or to influence the juror's actions in future jury service;</p> <p>(6) conduct a vexatious or harassing investigation of any juror or prospective juror;</p> <p>(7) communicate ex parte about an adversary proceeding with the judge or other official before whom the proceeding is pending, except as permitted by law; or</p> <p>(8) discuss with a judge potential employment of the judge if the lawyer or a firm with which the lawyer is associated has a matter that is pending before the judge; or</p> <p>(9) engage in conduct intended to disrupt a tribunal.</p> <p>(b) A lawyer who has knowledge of any violation of section (a) of this Rule, any improper conduct by a juror or prospective juror, or any improper conduct by another towards a juror or prospective juror, shall report it promptly to the court or other appropriate authority.</p>
Rule 3.6	Identical
Rule 3.7	Identical
Rule 3.8	does not include MR (e) (e), MR (f): replaces “investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor” with “an employee or other person under the control of the prosecutor”
Rule 3.9	Identical
Rule 4.1	changes MR (a) and (b) into (a)(1) and (a)(2); at the end of (a)(2), deletes “unless disclosure is prohibited by Rule 1.6.” adds as (b): The duties stated in this Rule apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.
Rule 4.2	(a): is similar to the text of the MR but adds at the beginning: “Except as provided in paragraph (c)” adds as (b): If the person represented by another lawyer is an organization, the prohibition extends to each of the organization's (1) current officers, directors, and managing agents and (2) current agents or employees who supervise, direct, or regularly communicate with the organization's lawyers concerning the matter or whose acts or omissions in the matter may bind the organization for civil or criminal liability. The lawyer may not communicate with a current agent or employee of the organization unless the lawyer first has made inquiry to ensure that the agent or employee is not an individual with whom communication is prohibited by this paragraph and has disclosed to the individual the lawyer's identity and the

	<p>fact that the lawyer represents a client who has an interest adverse to the organization.</p> <p>adds as (c): A lawyer may communicate with a government official about matters that are the subject of the representation if the government official has the authority to redress the grievances of the lawyer's client and the lawyer first makes the disclosures specified in paragraph (b).</p>
Rule 4.3	Does not include new last sentence
Rule 4.4	<p>(a): adds “the lawyer knows” before “violate”</p> <p>(b) differs from MR: In communicating with third persons, a lawyer representing a client in a matter shall not seek information relating to the matter that the lawyer knows or reasonably should know is protected from disclosure by statute or by an established evidentiary privilege, unless the protection has been waived. The lawyer who receives information that is protected from disclosure shall (1) terminate the communication immediately and (2) give notice of the disclosure to any tribunal in which the matter is pending and to the person entitled to enforce the protection against disclosure.</p>
Rule 5.1	Identical
Rule 5.2	Identical
Rule 5.3	Identical
Rule 5.4	<p>(a)(2): a lawyer who purchases the practice of a deceased, disabled or disappeared lawyer <u>who is deceased or disabled or who has disappeared</u> may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price <u>to the estate or representative of the lawyer</u>.</p> <p>adds as (a)(3): a lawyer who undertakes to complete unfinished legal business of a deceased, retired, disabled, or suspended lawyer may pay to that lawyer or that lawyer’s estate the proportion of the total compensation which fairly represents the services rendered by the former lawyer.</p>
Rule 5.5	Identical
Rule 5.6	Identical
Rule 5.7	Identical
Rule 6.1	<p>substantially different from MR:</p> <p>(a) Professional Responsibility. A lawyer has a professional responsibility to render pro bono publico legal service.</p> <p>(b) Discharge of Professional Responsibility. A lawyer in the full-time practice of law should aspire to render at least 50 hours per year of pro bono publico legal service, and a lawyer in part-time practice should aspire to render at least a pro rata number of hours.</p> <p>(1) Unless a lawyer is prohibited by law from rendering the legal services described below, a substantial portion of the applicable hours should be devoted to rendering legal service, without fee or expectation of fee, or at a substantially reduced fee, to:</p> <p>(A) people of limited means;</p> <p>(B) charitable, religious, civic, community, governmental, or educational organizations in matters designed primarily to address the needs of people of limited means;</p>

	<p>(C) individuals, groups, or organizations seeking to secure or protect civil rights, civil liberties, or public rights; or</p> <p>(D) charitable, religious, civic, community, governmental, or educational organizations in matters in furtherance of their organizational purposes when the payment of the standard legal fees would significantly deplete the organization's economic resources or would otherwise be inappropriate.</p> <p>(2) The remainder of the applicable hours may be devoted to activities for improving the law, the legal system, or the legal profession.</p> <p>(3) A lawyer also may discharge the professional responsibility set forth in this Rule by contributing financial support to organizations that provide legal services to persons of limited means.</p> <p>(c) Effect of Noncompliance. This Rule is aspirational, not mandatory. Noncompliance with this Rule shall not be grounds for disciplinary action or other sanctions.</p>
Rule 6.2	Identical
Rule 6.3	(a) and (b): deletes the words "or action"
Rule 6.4	Identical
Rule 6.5	Identical
Rule 7.1	Identical
Rule 7.2	<p>the rule and comment contain a mixture of the old and new MRs</p> <p>(a): similar to old MR; changes reference to "7.3" to "7.3(b)"; changes "or through written or recorded communication" to "or through communication not involving personal contact."</p> <p>retains old MR (b) which was deleted in new MR</p> <p>(c) is MR (b), except:</p> <p>(c)(2): deletes 2nd sentence and part of first sentence so it reads: pay the usual charges of a legal service plan or a not-for-profit lawyer referral service.</p> <p>(c)(4) similar to new MR (b)(4) but applies only to non-lawyer professionals.</p> <p>(d) is same as old MR (d)</p> <p>adds as (e): An advertisement or communication indicating that no fee will be charged in the absence of a recovery shall also disclose whether the client will be liable for any expenses.</p> <p>adds as (f): A lawyer, including a participant in an advertising group or lawyer referral service or other program involving communications concerning the lawyer's services, shall be personally responsible for compliance with the provisions of Rules 7.1, 7.2, 7.3, 7.4, and 7.5 and shall be prepared to substantiate such compliance.</p>
Rule 7.3	adds as (b)(1): the lawyer knows or reasonably should know that the physical, emotional or mental state of the person is such that the person could not exercise reasonable judgment in employing a lawyer;
Rule 7.4	<p>Did not add "and Specialization" to title.</p> <p>(a): adds at the end: "subject to the requirements of Rule 7.1. A lawyer shall not hold himself or herself out publicly as a specialist."</p> <p>does not include MR (c) or (d)</p>
Rule 7.5	Identical

Rule 7.6	does not include this rule
Rule 8.1	In the introductory phrase, adds reference to reinstatement as well as admission.
Rule 8.2	<p>(b): Canon 5C of Rule 16-813, Maryland Code of Judicial Conduct, provides that a lawyer becomes a candidate for judicial office when the lawyer files a certificate of candidacy in accordance with Maryland election laws, but no earlier than two years prior to the general election for that office. A candidate for judicial office:</p> <p>(1) shall maintain the dignity appropriate to the judicial office that the lawyer seeks and act in a manner consistent with the independence and integrity of the judiciary;</p> <p>(2) shall not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;</p> <p>(3) shall not misrepresent his or her identity or qualifications, the identity or qualifications of an opponent, or any other fact;</p> <p>(4) shall not allow any other person to do for the candidate what the candidate is prohibited from doing; and</p> <p>(5) may respond to personal attacks or attacks on the candidate's record as long as the response does not otherwise violate this Rule.</p> <p>does not include [2]</p>
Rule 8.3	(c): changes the end to "while participating in a lawyer or judge assistance or professional guidance program"
Rule 8.4	adds as (e): knowingly manifest by words or conduct when acting in a professional capacity bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status when such action is prejudicial to the administration of justice, provided, however, that legitimate advocacy is not a violation of this paragraph;
Rule 8.5	<p>(a) Disciplinary Authority.</p> <p>(1) A lawyer admitted <u>by the Court of Appeals</u> to practice in this jurisdiction <u>State</u> is subject to the disciplinary authority of this jurisdiction <u>State</u>, regardless of where the lawyer's conduct occurs.</p> <p>(2) A lawyer not admitted <u>to practice</u> in this jurisdiction <u>State</u> is also subject to the disciplinary authority of this jurisdiction <u>State</u> if the lawyer</p> <p style="padding-left: 40px;">(i) provides or offers to provide any legal services in this jurisdiction <u>State</u>,</p> <p style="padding-left: 40px;">(ii) <u>holds himself or herself out as practicing law in this State, or</u></p> <p style="padding-left: 40px;">(iii) <u>has an obligation to supervise or control another lawyer practicing law in this State whose conduct constitutes a violation of these Rules.</u></p> <p>(3) A lawyer may be subject to the disciplinary authority of both this jurisdiction <u>State</u> and another jurisdiction for the same conduct.</p> <p>(b) Choice of Law. In any exercise of the disciplinary authority of this State, the rule of professional conduct to be applied shall be as follows:</p> <p style="padding-left: 40px;">(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and</p> <p style="padding-left: 40px;">(2) for any other conduct, the rules of the jurisdiction in which the</p>

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	lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.
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