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

	MASSACHUSETTS New rules as adopted by Massachusetts Supreme Court to be effective 9/1/08. Variations from the Model Rules are noted. Rules only; comment comparison not included.
Preamble	Count starts with MR [2] which corresponds to MA [1] First provision is not counted. Corresponds to MR [1]. Deletes clause, "as a member…profession;" MA [1] (MR[2]) Changes last sentence to: "A lawyer acts as evaluator by examining a client's legal affairs and reporting about them to the client or to others;" Does not adopt MR [3]; MA [4] (MR[6]) Deletes sentence, "In addition...maintain their authority;" replaces language after "adequate legal assistance" with "and should therefore devote professional time and civic influence in their behalf. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest;" [9] Deletes language after "underlying the Rules."
Scope	Starts count from [1] MA [2] (MR[15]) Deletes language after "law in general;" MR [16] is a past of MA [2] MA [4] (MR[18]) Replaces language after "multiple private clients" with "They also may have authority to represent the "public interest" in circumstances where a private lawyer would not be authorized to do so. These rules are not meant to address the substantive statutory and constitutional authority of the Attorney General when appearing for the Commonwealth to assume primary control over the litigation and to decide matters of legal policy on behalf of the Commonwealth;" Does not adopt [20]; Adds MA [6]: *"A violation of a canon of ethics or a disciplinary rule . . . is not itself an actionable breach of duty to a client." Fishman v. Brooks, 396 Mass. 643, 649 (1986). The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. The fact that a Rule is just a basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not necessarily mean that an antagonist in a collateral proceeding or transaction may rely on a violation of a Rule. "As with statutes and regulations, however, if a plaintiff can demonstrate that a disciplinary rule was intended to protect one in his position, a violation of that rule may be some evidence of the attorney's negligence." Id. at 649.*

	Adds MA [6]: *Moreover, these Rules are not intended to govern or affect judicial application of either the attorney-client or work product privilege. Those privileges were developed to promote compliance with law and fairness in litigation. In reliance on the attorney-client privilege, clients are entitled to expect that communications within the scope of the privilege will be protected against compelled disclosure. The attorney-client privilege is that of the client and not of the lawyer. The fact that in exceptional situations the lawyer under the Rules has a limited discretion to disclose a client confidence does not vitiate the proposition that, as a general matter, the client has a reasonable expectation that information relating to the client will not be voluntarily disclosed and that disclosure of such information may be judicially compelled only in accordance with recognized exceptions to the attorney-client and work product privileges.*
Rule 1.0	Does not adopt
Rule 1.1	Same as MR
Rule 1.2	Changes title to "Scope of Representation" (a) Replaces the first two sentences with: "A lawyer shall seek the lawful objectives of his or her client through reasonably available means permitted by law and these rules. A lawyer does not violate this rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of his or her client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process;" Replaces MR (c) with: *(c) A lawyer may limit the objectives of the representation if the client consents after consultation;* Adds (e): *(e) When a lawyer knows that a client expects assistance not permitted by the rules of professional conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.*
Rule 1.3	Adds to end: "The lawyer should represent a client zealously within the bounds of the law."
Rule 1.4	Replaces MR 1.4 with: *(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.* *(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.*
Rule 1.5	(a) Replaces language after "charge" with "or collect an illegal or clearly excessive fee;" Does not adopt MR (b) but instead adds:

	(b) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation. (c) Replaces "A contingent fee…prevailing party" with "*Except for contingent fee arrangements concerning the collection of commercial accounts and of insurance company subrogation claims, a contingent fee agreement shall be in writing and signed in duplicate by both the lawyer and the client within a reasonable time after the making of the agreement. One such copy (and proof that the duplicate copy has been delivered or mailed to the client) shall be retained by the lawyer for a period of seven years after the conclusion of the contingent fee matter. The writing shall state:* *(1) the name and address of each client;* *(2) the name and address of the lawyer or lawyers to be retained;* *(3) the nature of the claim, controversy, and other matters with reference to which the services are to be performed;* *(4) the contingency upon which compensation to be paid, and whether and to what extent the client is to be liable to pay compensation otherwise than from amounts collected for him or her by the lawyer;* *(5) the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer out of amounts collected, and unless the parties otherwise agree in writing, that the lawyer shall be entitled to the greater of (i) the amount of any attorney's fees awarded by the court or included in the settlement or (ii) the percentage or other formula applied to the recovery amount not including such attorney's fees; and* *(6) the method by which litigation and other expenses are to be deducted from the recovery and whether such expenses are to be deducted before or after the contingent fee is calculated.* Adds clause after "contingent fee matter" in last sentence: "for which a writing is required under this paragraph;" (e) Adds to end, "after informing the client that a division of fees will be made, the client consents to the joint participation and the total fee is reasonable. This limitation does not prohibit payment to a former partner or associate pursuant to a separation or retirement agreement;" Does not adopt MR (e)(1) through (3); Adds: *(f) The following form of contingent fee agreement may be used to satisfy the requirements of paragraph (c). The authorization of this form shall not prevent the use of other forms consistent with this rule.*
Rule 1.6	(a) Similar to MR (a), but adds "confidential" before "information," changes "gives informed consent" to "consents after consultation," changes "the disclosure is" to "except for disclosures that are," changes "or the disclosure is permitted by paragraph (b)" to "and except as stated in paragraph (b)." (b) Similar to MR (b) but changes wording: "A lawyer may reveal, and to the extent required by Rule 3.3, Rule 4.1(b), or Rule 8.3 must reveal, such

	information:" (1) Combines MR (b)(1) and (2) and changes wording: "to prevent the commission of a criminal or fraudulent act that the lawyer reasonably believes is likely to result in death or substantial bodily harm, or in substantial injury to the financial interests or property of another," adds "or to prevent the wrongful execution or incarceration of another;" (2) Similar to MR (b)(5) but adds to beginning of paragraph: "to the extent the lawyer reasonably believes necessary" (3) Similar to part of MR (b)(3) referring to the rectification of substantial injury; "to the extent the lawyer reasonably believes necessary to rectify client fraud in which the lawyer's services have been used, subject to Rule 3.3 (e);" (4) Similar to MR (b)(6) but changes wording: "when permitted under these rules or required by law or court order." Adds as (c): *A lawyer participating in a lawyer assistance program, as hereinafter defined, shall treat the person so assisted as a client for the purposes of this rule. Lawyer assistance means assistance provided to a lawyer, judge, other legal professional, or law student by a lawyer participating in an organized nonprofit effort to provide assistance in the form of (a) counseling as to practice matters (which shall not include counseling a law student in a law school clinical program) or (b) education as to personal health matters, such as the treatment and rehabilitation from a mental, emotional, or psychological disorder, alcoholism, substance abuse, or other addiction, or both. A lawyer named in an order of the Supreme Judicial Court or the Board of Bar Overseers concerning the monitoring or terms of probation of another attorney shall treat that other attorney as a client for the purposes of this rule. Any lawyer participating in a lawyer assistance program may require a person acting under the lawyer's supervision or control to sign a nondisclosure form approved by the Supreme Judicial Court. Nothing in this paragraph (c) shall require a bar association-sponsored ethics advisory committee, the Office of Bar Counsel, or any other governmental agency advising on questions of professional responsibility to treat persons so assisted as clients for the purpose of this rule.* **Adopts modified 2003 Task Force changes**
Rule 1.7	***RULE 1.7 CONFLICT OF INTEREST: GENERAL RULE*** *(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:* *(1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and* *(2) each client consents after consultation.* *(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:* *(1) the lawyer reasonably believes the representation will not be adversely affected; and*

	(2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.
Rule 1.8	Changes title to "Conflict of Interest: Prohibited Transaction;" (a)(1) Adds "in writing" after "to the client;" (a)(2) and (3) are equivalent to MR but with different language: *(2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and* *(3) the client consents in writing thereto.* (b) Adds "confidential" before "information;" adds before "unless," "or for the lawyer's advantage or the advantage of a third person;" replaces "gives informed consent" with "consents after consultation;" replaces language after "except" with: "as Rule 1.6 or Rule 3.3 would permit or require;" Replaces MR (c) with: *(c) A lawyer shall not prepare an instrument giving the lawyer or a person related to the lawyer as parent, child, sibling, or spouse any substantial gift from a client, including a testamentary gift, except where the client is related to the donee.* (f)(1) is equivalent to MR but changes language: *(f)(1) the client consents after consultation;* (g) Replaces language after "unless each client" with "consents after consultation, including disclosure of the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement;" Replaces MR (h) with: *(h) A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement, or settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith.* Adds: *(i) 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 consent by the client after consultation regarding the relationship.* (j) is the same as MR (i); Does not adopt MR (j) or (k).
Rule 1.9	Changes title to: "Conflict of Interest: Former Client" Replaces "gives informed consent…writing" with "consents after consultation" throughout; (c) Adds to end of paragraph: "unless the former client consents after consultation;" (c)(1) Adds "confidential" before "information;" adds "to the lawyer's advantage, or to the advantage of a third person" before "except as;" replaces

	"these Rules" with "Rule 1.6, Rule 3.3, or Rule 4.1;" Deletes language after "with respect to a client;" (c)(2) Adds "confidential" before "information;" replaces "these Rules" with "Rule 1.6 or Rule 3.3."
Rule 1.10	Changes title to: "Imputed Disqualification: General Rule" (a) MA Rules deletes language after "unless" and adds: "A lawyer employed by the Public Counsel Division of the Committee for Public Counsel Services and a lawyer assigned to represent clients by the Private Counsel Division of that Committee are not considered to be associated. Lawyers are not considered to be associated merely because they have each individually been assigned to represent clients by the Committee for Public Counsel Services through its Private Counsel Division." Does not adopt MR (d) Adds as (d) and (e): (d) When a lawyer becomes associated with a firm, the firm may not undertake to or continue to represent a person in a matter that the firm knows or reasonably should know is the same or substantially related to a matter in which the newly associated lawyer (the "personally disqualified lawyer"), or a firm with which that lawyer was associated, had previously represented a client whose interests are materially adverse to that person unless: (1) the personally disqualified lawyer has no information protected by Rule 1.6 or Rule 1.9 that is material to the matter ("material information"); or (2) the personally disqualified lawyer (i) had neither substantial involvement nor substantial material information relating to the matter and (ii) is screened from any participation in the matter in accordance with paragraph (e) of this Rule and is apportioned no part of the fee therefrom. (e) For the purposes of paragraph (d) of this Rule and of Rules 1.11 and 1.12, a personally disqualified lawyer in a firm will be deemed to have been screened from any participation in a matter if: (1) all material information which the personally disqualified lawyer has been isolated from the firm; (2) the personally disqualified lawyer has been isolated from all contact with the client relating to the matter, and any witness for or against the client; (3) the personally disqualified lawyer and the firm have been precluded from discussing the matter with each other; (4) the former client of the personally disqualified lawyer or of the firm with which the personally disqualified lawyer was associated receives notice of the conflict and an affidavit of the personally disqualified lawyer and the firm describing the procedures being used effectively to screen the personally disqualified lawyer, and attesting that (i) the personally

	disqualified lawyer will not participate in the matter and will not discuss the matter or the representation with any other lawyer or employee of his or her current firm, (ii) no material information was transmitted by the personally disqualified lawyer before implementation of the screening procedures and notice to the former client; and (iii) during the period of the lawyer's personal disqualification those lawyers or employees who do participate in the matter will be apprised that the personally disqualified lawyer is screened from participating in or discussing the matter; and (5) the personally disqualified lawyer and the firm with which he is associated reasonably believe that the steps taken to accomplish the screening of material information are likely to be effective in preventing material information from being disclosed to the firm and its client. In any matter in which the former client and the person being represented by the firm with which the personally disqualified lawyer is associated are not before a tribunal, the firm, the personally disqualified lawyer, or the former client may seek judicial review in a court of general jurisdiction of the screening procedures used, or may seek court supervision to ensure that implementation of the screening procedures has occurred and that effective actual compliance has been achieved.
Rule 1.11	Changes title to: Successive Government and Private Employment" Does not adopt MR (a) or (b); Adds: *(a) Except as law may otherwise expressly permit, a lawyer shall not represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency consents after consultation. No lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:* *(1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and* *(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.* (b) is similar to MR (c), but deletes sentence beginning with "As used in this Rule;" (c) is similar to MR (d) but deletes "currently" before "serving;" adds "shall not;" Does not adopt (d)(1); (c)(1) is similar to MR (d)(2)(i) but replaces language after "unless" with "under applicable law no one is, or by lawful delegation may be, authorized to act in the lawyer's stead in the matter; or;"

	(c)(2) is the same as MR (d)(2)(ii); Adds: *(e) As used in this rule, the term "confidential government information" means information which has been obtained under governmental authority and which, at the time this rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose, and which is not otherwise available to the public.*
Rule 1.12	Changes title to: Former Judge or Arbitrator" (a) Adds "arbitrator, mediator" before "or law clerk;" replaces language after "to such a person" with "unless all parties to the proceeding consent after consultation;" (b) Adds to end, "arbitrator, or mediator."
Rule 1.13	Same as MR **Adopts 2003 Task Force changes**
Rule 1.14	(b) Adds after "diminished capacity," "that prevents the client from making an adequately considered decision regarding a specific issue that is part of the representation;" replaces language after "client's own interest" with "the lawyer may take reasonably necessary protective action in connection with the representation, including consulting individuals or entities that have ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator, or guardian."
Rule 1.15	***(a) Definitions:*** *(1) "Trust property" means property of clients or third persons that is in a lawyer's possession in connection with a representation and includes property held in any fiduciary capacity in connection with a representation, whether as trustee, agent, escrow agent, guardian, executor, or otherwise. Trust property does not include documents or other property received by a lawyer as investigatory material or potential evidence. Trust property in the form of funds is referred to as "trust funds."* *(2) "Trust account" means an account in a financial institution in which trust funds are deposited. Trust accounts must conform to the requirements of this rule.* ***(b) Segregation of Trust Property.** A lawyer shall hold trust property separate from the lawyer's own property.* *(1) Trust funds shall be held in a trust account, except that advances for costs and expenses may be held in a business account.* *(2) No funds belonging to the lawyer shall be deposited or retained in a trust account except that:* *(i) Funds reasonably sufficient to pay bank charges may be deposited therein, and* *(ii) Trust funds belonging in part to a client or third person and in part currently or potentially to the lawyer shall be deposited in a trust account, but the portion belonging to the lawyer must be withdrawn at the earliest reasonable time after the lawyer's interest in that portion becomes fixed. A lawyer who knows that the right of the lawyer or law firm to receive such portion is disputed shall not withdraw the funds until the dispute is resolved. If*

	the right of the lawyer or law firm to receive such portion is disputed within a reasonable time after notice is given that the funds have been withdrawn, the disputed portion must be restored to a trust account until the dispute is resolved. *(3) Trust property other than funds shall be identified as such and appropriately safeguarded.* ***(c) Prompt Notice and Delivery of Trust Property to Client or Third Person.*** *Upon receiving trust funds or other trust property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or as otherwise permitted by law or by agreement with the client or third person on whose behalf a lawyer holds trust property, 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.* ***(d) Accounting.*** *(1) Upon final distribution of any trust property or upon request by the client or third person on whose behalf a lawyer holds trust property, the lawyer shall promptly render a full written accounting regarding such property.* *(2) On or before the date on which a withdrawal from a trust account is made for the purpose of paying fees due to a lawyer, the lawyer shall deliver to the client in writing (i) an itemized bill or other accounting showing the services rendered, (ii) written notice of amount and date of the withdrawal, and (iii) a statement of the balance of the client's funds in the trust account after the withdrawal.* ***(e) Operational Requirements for Trust Accounts.*** *(1) All trust accounts shall be maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person on whose behalf the trust property is held, except that all funds required by this rule to be deposited in an IOLTA account shall be maintained in this Commonwealth.* *(2) Each trust account title shall include the words "trust account," "escrow account," "client funds account," "conveyancing account," "IOLTA account," or words of similar import indicating the fiduciary nature of the account. Lawyers maintaining trust accounts shall take all steps necessary to inform the depository institution of the purpose and identity of such accounts.* *(3) No withdrawal from a trust account shall be made by a check which is not prenumbered. No withdrawal shall be made in cash or by automatic teller machine or any similar method. No withdrawal shall be made by a check payable to "cash" or "bearer" or by any other method which does not identify the recipient of the funds.* *(4) Every withdrawal from a trust account for the purpose of paying fees to a lawyer or reimbursing a lawyer for costs and expenses shall be payable to the lawyer or the lawyer's law firm.* *(5) Each lawyer who has a law office in this Commonwealth and who holds trust funds shall deposit such funds, as appropriate, in one of two types of interest bearing accounts: either (i) a pooled account ("IOLTA account") for all trust funds which in the judgment of the lawyer are nominal in amount, or*

	are to be held for a short period of time, or (ii) for all other trust funds, an individual account with the interest payable as directed by the client or third person on whose behalf the trust property is held. The foregoing deposit requirements apply to funds received by lawyers in connection with real estate transactions and loan closings, provided, however, that a trust account in a lending bank in the name of a lawyer representing the lending bank and used exclusively for depositing and disbursing funds in connection with that particular bank's loan transactions, shall not be required but is permitted to be established as an IOLTA account. All IOLTA accounts shall be established in compliance with the provisions of paragraph (g) of this rule. *(6) Property held for no compensation as a custodian for a minor family member is not subject to the Operational Requirements for Trust Accounts set out in this paragraph (e) or to the Required Accounts and Records in paragraph (f) of this rule. As used in this subsection, "family member" refers to those individuals specified in section (e)(2) of rule 7.3.* ***(f) Required Accounts and Records:** Every lawyer who is engaged in the practice of law in this Commonwealth and who holds trust property in connection with a representation shall maintain complete records of the receipt, maintenance, and disposition of that trust property, including all records required by this subsection. Records shall be preserved for a period of six years after termination of the representation and after distribution of the property. Records may be maintained by computer subject to the requirements of subparagraph 1G of this paragraph (f) or they may be prepared manually.* ***(1) Trust Account Records.** The following books and records must be maintained for each trust account:* ***A. Account Documentation.** A record of the name and address of the bank or other depository; account number; account title; opening and closing dates; and the type of account, whether pooled, with net interest paid to the IOLTA Committee (IOLTA account), or account with interest paid to the client or third person on whose behalf the trust property is held (including master or umbrella accounts with individual subaccounts).* ***B. Check Register.** A check register recording in chronological order the date and amount of all deposits; the date, check or transaction number, amount, and payee of all disbursements, whether by check, electronic transfer, or other means; the date and amount of every other credit or debit of whatever nature; the identity of the client matter for which funds were deposited or disbursed; and the current balance in the account.* ***C. Individual Client Records.** A record for each client or third person for whom the lawyer received trust funds documenting each receipt and disbursement of the funds of the client or third person, the identity of the client matter for which funds were deposited or disbursed, and the balance held for the client or third person, including a subsidiary ledger or ledger for each client matter for which the lawyer receives trust funds documenting each receipt and disbursement of the funds of the client or third person with respect to such matter. A lawyer shall not disburse funds from the trust account that would create a negative balance with respect to any individual client.*

	D. Bank Fees and Charges. *A ledger or other record for funds of the lawyer deposited in the trust account pursuant to paragraph (b)(2)(i) of this rule to accommodate reasonably expected bank charges. This ledger shall document each deposit and expenditure of the lawyer's funds in the account and the balance remaining.* ***E. Reconciliation Reports.*** *For each trust account, the lawyer shall prepare and retain a reconciliation report on a regular and periodic basis but in any event no less frequently than every sixty days. Each reconciliation report shall show the following balances and verify that they are identical:* *(i) The balance which appears in the check register as of the reporting date.* *(ii) The adjusted bank statement balance, determined by adding outstanding deposits and other credits to the bank statement balance and subtracting outstanding checks and other debits from the bank statement balance.* *(iii) For any account in which funds are held for more than one client matter, the total of all client matter balances, determined by listing each of the individual client matter records and the balance which appears in each record as of the reporting date, and calculating the total. For the purpose of the calculation required by this paragraph, bank fees and charges shall be considered an individual client record. No balance for an individual client may be negative at any time.* ***F. Account Documentation.*** *For each trust account, the lawyer shall retain contemporaneous records of transactions as necessary to document the transactions. The lawyer must retain:* *(i) bank statements.* *(ii) all transaction records returned by the bank, including canceled checks and records of electronic transactions.* *(iii) records of deposits separately listing each deposited item and the client or third person for whom the deposit is being made.* ***G. Electronic Record Retention.*** *A lawyer who maintains a trust account record by computer must maintain the check register, client ledgers, and reconciliation reports in a form that can be reproduced in printed hard copy. Electronic records must be regularly backed up by an appropriate storage device.* ***(2) Business Accounts.*** *Each lawyer who receives trust funds must maintain at least one bank account, other than the trust account, for funds received and disbursed other than in the lawyer's fiduciary capacity.* ***(3) Trust Property Other than Funds.*** *A lawyer who receives trust property other than funds must maintain a record showing the identity, location, and disposition of all such property.* ***(g) Interest on Lawyers' Trust Accounts.*** *(1) The IOLTA account shall be established with any bank, savings and loan association, or credit union authorized by Federal or State law to do business in Massachusetts and insured by the Federal Deposit Insurance Corporation or similar State insurance programs for State chartered institutions. At the direction of the lawyer, funds in the IOLTA account in excess of $100,000 may be temporarily reinvested in repurchase agreements fully collateralized by*

	U.S. Government obligations. Funds in the IOLTA account shall be subject to withdrawal upon request and without delay. *(2) Lawyers creating and maintaining an IOLTA account shall direct the depository institution:* *(i) to remit interest or dividends, net of any service charges or fees, on the average monthly balance in the account, or as otherwise computed in accordance with an institution's standard accounting practice, at least quarterly, to the IOLTA Committee;* *(ii) to transmit with each remittance to the IOLTA Committee a statement showing the name of the lawyer who or law firm which deposited the funds; and* *(iii) at the same time to transmit to the depositing lawyer a report showing the amount paid, the rate of interest applied, and the method by which the interest was computed.* *(3) Lawyers shall certify their compliance with this rule as required by S.J.C. Rule 4:02, subsection (2).* *(4) This court shall appoint members of a permanent IOLTA Committee to fixed terms on a staggered basis. The representatives appointed to the committee shall oversee the operation of a comprehensive IOLTA program, including:* *(i) the receipt of all IOLTA funds and their disbursement, net of actual expenses, to the designated charitable entities, as follows: sixty seven percent (67%) to the Massachusetts Legal Assistance Corporation and the remaining thirty three percent (33%) to other designated charitable entities in such proportions as the Supreme Judicial Court may order;* *(ii) the education of lawyers as to their obligation to create and maintain IOLTA accounts under Rule 1.15(h);* *(iii) the encouragement of the banking community and the public to support the IOLTA program;* *(iv) the obtaining of tax rulings and other administrative approval for a comprehensive IOLTA program as appropriate;* *(v) the preparation of such guidelines and rules, subject to court approval, as may be deemed necessary or advisable for the operation of a comprehensive IOLTA program;* *(vi) establishment of standards for reserve accounts by the recipient charitable entities for the deposit of IOLTA funds which the charitable entity intends to preserve for future use; and* *(vii) reporting to the court in such manner as the court may direct.* *(5) The Massachusetts Legal Assistance Corporation and other designated charitable entities shall receive IOLTA funds from the IOLTA Committee and distribute such funds for approved purposes. The Massachusetts Legal Assistance Corporation may use IOLTA funds to further its corporate purpose and other designated charitable entities may use IOLTA funds either for (a) improving the administration of justice or (b) delivering civil legal services to those who cannot afford them.* *(6) The Massachusetts Legal Assistance Corporation and other designated*

	charitable entities shall submit an annual report to the court describing their IOLTA activities for the year and providing a statement of the application of IOLTA funds received pursuant to this rule. ***(h) Dishonored Check Notification.*** *All trust accounts shall be established in compliance with the following provisions on dishonored check notification:* *(1) A lawyer shall maintain trust accounts only in financial institutions which have filed with the Board of Bar Overseers an agreement, in a form provided by the Board, to report to the Board in the event any properly payable instrument is presented against any trust account that contains insufficient funds, and the financial institution dishonors the instrument for that reason.* *(2) Any such agreement shall apply to all branches of the financial institution and shall not be cancelled except upon thirty days notice in writing to the Board.* *(3) The Board shall publish annually a list of financial institutions which have signed agreements to comply with this rule, and shall establish rules and procedures governing amendments to the list.* *(4) The dishonored check notification agreement shall provide that all reports made by the financial institution shall be identical to the notice of dishonor customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors. Such reports shall be made simultaneously with the notice of dishonor and within the time provided by law for such notice, if any.* *(5) Every lawyer practicing or admitted to practice in this Commonwealth shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements mandated by this rule.* *(6) The following definitions shall be applicable to this subparagraph:* *(i) "Financial institution" includes (a) any bank, savings and loan association, credit union, or savings bank, and (b) with the written consent of the client or third person on whose behalf the trust property is held, any other business or person which accepts for deposit funds held in trust by lawyers.* *(ii) "Notice of dishonor" refers to the notice which a financial institution is required to give, under the laws of this Commonwealth, upon presentation of an instrument which the institution dishonors.* *(iii) "Properly payable" refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under the laws of this Commonwealth.*
Rule 1.16	(b) is the same as MR (b) and (b)(1), combined; (b)(1) is the same as MR (b)(2); (b)(2) is the same as MR (b)(3); (b)(3) is similar to MR (b)(4) but changes "taking action" to "pursuing an objective;" (b)(4) through (6) are the same as MR (b)(5) through (7); Replaces MR (c) with: *(c) If permission for withdrawal from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a*

	proceeding before that tribunal without its permission. (d) Deletes language following "earned;" Adds: *(e) A lawyer must make available to a former client, within a reasonable time following the client's request for his or her file, the following:* *(1) all papers, documents, and other materials the client supplied to the lawyer. The lawyer may at his or her own expense retain copies of any such materials.* *(2) all pleadings and other papers filed with or by the court or served by or upon any party. The client may be required to pay any copying charge consistent with the lawyer's actual cost for these materials, unless the client has already paid for such materials.* *(3) all investigatory or discovery documents for which the client has paid the lawyer's out-of-pocket costs, including but not limited to medical records, photographs, tapes, disks, investigative reports, expert reports, depositions, and demonstrative evidence. The lawyer may at his or her own expense retain copies of any such materials.* *(4) if the lawyer and the client have not entered into a contingent fee agreement, the client is entitled only to that portion of the lawyer's work product (as defined in subparagraph (6) below) for which the client has paid.* *(5) if the lawyer and the client have entered into a contingent fee agreement, the lawyer must provide copies of the lawyer's work product (as defined in subparagraph (6) below). The client may be required to pay any copying charge consistent with the lawyer's actual cost for the copying of these materials.* *(6) for purposes of this paragraph (e), work product shall consist of documents and tangible things prepared in the course of the representation of the client by the lawyer or at the lawyer's direction by his or her employee, agent, or consultant, and not described in paragraphs (2) or (3) above. Examples of work product include without limitation legal research, records of witness interviews, reports of negotiations, and correspondence.* *(7) notwithstanding anything in this paragraph (e) to the contrary, a lawyer may not refuse, on grounds of nonpayment, to make available materials in the client's file when retention would prejudice the client unfairly.*
Rule 1.17	Replaces "or purchase…of law practice" with: "and a lawyer or law firm may purchase, with or without consideration, a law practice;" (a) [RESERVED] (b) [RESERVED] (c) Replaces language before "to each of the seller's" with: "Actual written notice is given;" Adds: *(c)(2) the terms of any proposed change in the fee arrangement*

	authorized by paragraph (d); (c)(3) and (4) are the same as MR (c)(2) and (3); Replaces MR (d) with: *(d) The fees charged clients shall not be increased by reason of the sale. The purchaser may, however, refuse to undertake the representation unless the client consents to pay the purchaser fees at a rate not exceeding the fees charged by the purchaser for rendering substantially similar services prior to the initiation of the purchase negotiations.*
Rule 1.18	Does not adopt
Rule 2.1	Same as MR
Rule 2.2	[N/A]
Rule 2.3	*(a) A lawyer may undertake an evaluation of a matter affecting a client for the use of someone other than the client if:* *(1) the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client; and* *(2) the client consents after consultation.* *(b) Except as disclosure is required in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by Rule 1.6.*
Rule 2.4	Same as MR
Rule 3.1	Same as MR
Rule 3.2	Same as MR
Rule 3.3	(a)(1) Deletes language after "to a tribunal;" Adds: (a)(2): (2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client, except as provided in Rule 3.3 (e); (a)(3) is the same as MR (a)(2); (a)(4) Adds after "knows to be false:" "except as provided in Rule 3.3 (e);" deletes "the lawyer's client…by the lawyer;" adds "or the lawyer's client or witnesses testifying on behalf of the client have given" after "has offered;" deletes language after "remedial measures;" Does not adopt MR (b); (b) is is similar to MR (c) but does not reference paragraph (b); Adds: *(e) In a criminal case, defense counsel who knows that the defendant, the client, intends to testify falsely may not aid the client in constructing false testimony, and has a duty strongly to discourage the client from testifying falsely, advising that such a course is unlawful, will have substantial adverse consequences, and should not be followed. If a lawyer discovers this intention before accepting the*

	representation of the client, the lawyer shall not accept the representation; if the lawyer discovers this intention before trial, the lawyer shall seek to withdraw from the representation, requesting any required permission. Disclosure of privileged or prejudicial information shall be made only to the extent necessary to effect the withdrawal. If disclosure of privileged or prejudicial information is necessary, the lawyer shall make an application to withdraw ex parte to a judge other than the judge who will preside at the trial and shall seek to be heard in camera and have the record of the proceeding, except for an order granting leave to withdraw, impounded. If the lawyer is unable to obtain the required permission to withdraw, the lawyer may not prevent the client from testifying. If a criminal trial has commenced and the lawyer discovers that the client intends to testify falsely at trial, the lawyer need not file a motion to withdraw from the case if the lawyer reasonably believes that seeking to withdraw will prejudice the client. If, during the client's testimony or after the client has testified, the lawyer knows that the client has testified falsely, the lawyer shall call upon the client to rectify the false testimony and, if the client refuses or is unable to do so, the lawyer shall not reveal the false testimony to the tribunal. In no event may the lawyer examine the client in such a manner as to elicit any testimony from the client the lawyer knows to be false, and the lawyer shall not argue the probative value of the false testimony in closing argument or in any other proceedings, including appeals.
Rule 3.4	Adds: *(g) pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of his or her testimony or the outcome of the case. But a lawyer may advance, guarantee, or acquiesce in the payment of:* *(1) expenses reasonably incurred by a witness in attending or testifying* *(2) reasonable compensation to a witness for loss of time in attending or testifying* *(3) a reasonable fee for the professional services of an expert witness;* *(h) present, participate in presenting, or threaten to present criminal or disciplinary charges solely to obtain an advantage in a private civil matter; or* *(i) in appearing in a professional capacity before a tribunal, engage in conduct manifesting bias or prejudice based on race, sex, religion, national origin, disability, age, or sexual orientation against a party, witness, counsel, or other person. This paragraph does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, or sexual orientation, or another similar factor is an issue in the proceeding.*
Rule 3.5	(b) Replaces language after “such a person” with “except as permitted by law;”

	(c) is the same as MR (d); Does not adopt MR (c); Adds: *(d) after discharge of the jury from further consideration of a case with which the lawyer was connected, initiate any communication with a member of the jury without leave of court granted for good cause shown. If a juror initiates a communication with such a lawyer, directly or indirectly, the lawyer may respond provided that the lawyer shall not ask questions of or make comments to a member of that jury that are intended only to harass or embarrass the juror or to influence his or her actions in future jury service. In no circumstances shall such a lawyer inquire of a juror concerning the jury's deliberation processes.*
Rule 3.6	(a) Replaces "that the lawyer knows…know will be" with "that a reasonable person would expect to be;" inserts after "public communication:" "if the lawyer knows or reasonably should know that it;" Adds: *(e) This rule does not preclude a lawyer from replying to charges of misconduct publicly made against him or her or from participating in the proceedings of a legislative, administrative, or other investigative body.*
Rule 3.7	(a) Replaces "unless" with "except where."
Rule 3.8	(c) Adds to end: "unless a court first has obtained from the accused a knowing and intelligent written waiver of counsel;" Adds: *(e) exercise reasonable care to prevent investigators, law enforcement personnel, employees, or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6;* (f) is similar to MR (e) but moves language starting with "the prosecutor" to subparagraph (f)(1); Deletes (f) through (h); Adds: *(h) not assert personal knowledge of the facts in issue, except when testifying as a witness;* *(i) not assert a personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused; but the prosecutor may argue, on analysis of the evidence, for any position or conclusion with respect to the matters stated herein; and* *(j) not intentionally avoid pursuit of evidence because the prosecutor believes it will damage the prosecution's case or aid the accused.*
Rule 3.9	Adds "(a) through (c)" after "3.5."
Rule 4.1	Same as MR
Rule 4.2	Does not have "or a court order"
Rule 4.3	(a) is the same as the first part of MR, through "correct the misunderstanding;"

	(b) is similar to last part of MR, but adds to beginning: "During the course of representation of a client;" changes "to an unrepresented person" to "a person who is not represented by a lawyer;" Adds "other than the advice to secure counsel if" before "the interests."
Rule 4.4	Does not adopt (b).
Rule 5.1	Changes title to: RESPONSIBILITIES OF A PARTNER OR SUPERVISORY LAWYER (a) Deletes "and a lawyer…in a law firm;" (c)(2) Deletes "or has comparable…authority."
Rule 5.2	Same as MR
Rule 5.3	(a) Deletes "and a lawyer…in a law firm."
Rule 5.4	Replaces language in (a)(4) with: *a lawyer or law firm may agree to share a statutory or tribunal-approved fee award, or a settlement in a matter eligible for such an award, with a qualified legal assistance organization that referred the matter to the lawyer or law firm, if (i) the organization is one that is not for profit, (ii) the organization is tax-exempt under federal law, (iii) the fee award or settlement is made in connection with a proceeding to advance one or more of the purposes by virtue of which the organization is tax-exempt, and (iv) the client consents, after being informed that a division of fees will be made, to the sharing of the fees and the total fee is reasonable.* (b) Adds "or other business entity" after "a partnership;" (d) Replaces "professional corporation or association" with "limited liability entity;" (d)(2) Changes language to: *(2) a nonlawyer is an officer, or a corporate director or limited liability company manager thereof; or*
Rule 5.5	Same as MR
Rule 5.6	(a) Deletes "shareholders, operating" and "or other similar type of" and adds "or" before "agreement."
Rule 5.7	Same as MR
Rule 6.1	Changes language to: *A lawyer should provide annually at least 25 hours of pro bono publico legal services for the benefit of persons of limited means. In providing these professional services, the lawyer should:* *(a) provide all or most of the 25 hours of pro bono publico legal services without compensation or expectation of compensation to persons of limited means, or to charitable, religious, civic, community, governmental, and educational organizations in matters that are designed primarily to address the needs of persons of limited means. The lawyer may provide any remaining hours by delivering legal*

	services at substantially reduced compensation to persons of limited means or by participating in activities for improving the law, the legal system, or the legal profession that are primarily intended to benefit persons of limited means; or, *(b) contribute from $250 to 1% of the lawyer's annual taxable, professional income to one or more organizations that provide or support legal services to persons of limited means.*
Rule 6.2	Same as MR
Rule 6.3	Same as MR
Rule 6.4	Same as MR
Rule 6.5	Same as MR
Rule 7.1	Same as MR
Rule 7.2	(a) Deletes "and 7.3;" replaces language after "through" with "public media, such as a telephone directory, legal directory including an electronic or computer-accessed directory, newspaper or other periodical, outdoor advertising, radio or television, or through written communication not involving solicitation prohibited in Rule 7.3;" Adds: (b) A copy or recording of an advertisement or written communication shall be kept for two years after its last dissemination along with a record of when and where it was used. (c)(1) and (c)(3) are the same as MR (b)(1) and (b)(3); (c)(2) similar to MR (b)(2) but replaces language with: *(2) pay the usual charges of a not-for-profit lawyer referral service or legal service organization;* (c)(4) is similar to MR (b)(3) but replaces language with: *(4) pay referral fees permitted by Rule 1.5(e);* Adds: *(c)(5) share a statutory fee award or court-approved settlement in lieu thereof with a qualified legal assistance organization in accordance with Rule 5.4(a)(4).* (d) is the same as MR (c).
Rule 7.3	Changes title to: "Solicitation of Professional Employment" Replaces MR (a) with: *(a) In soliciting professional employment, a lawyer shall not coerce or harass a prospective client and shall not make a false or misleading communication.* (b) Replaces language following "professional employment" with: *(1) the lawyer knows or reasonably should know that the physical, mental, or emotional state of the prospective client is such that there is a substantial potential that the person cannot exercise reasonable judgment in employing a lawyer, provided, however, that this prohibition shall not apply to solicitation not for a fee; or* Adds (b)(2), which is the same as MR (b)(1);

	Does not adopt MR (c) or (d) but adds instead: *(c) Except as provided in paragraph (e), a lawyer shall not solicit professional employment for a fee from a prospective client known to be in need of legal services in a particular matter by written communication, including audio or video cassette or other electronic communication, unless the lawyer retains a copy of such communication for two years.* *(d) Except as provided in paragraph (e), a lawyer shall not solicit professional employment for a fee from a prospective client in person or by personal communication by telephone, electronic device, or otherwise.* *(e) The following communications shall be exempt from the provisions of paragraphs (c) and (d) above:* *(1) communications to members of the bar of any state or jurisdiction;* *(2) communications to individuals who are* *(A) the grandparents of the lawyer or the lawyer's spouse,* *(B) descendants of the grandparents of the lawyer or the lawyer's spouse, or* *(C) the spouse of any of the foregoing persons;* *(3) communications to prospective clients with whom the lawyer had a prior attorney-client relationship; and* *(4) communications with (i) organizations, including non-profit and government entities, in connection with the activities of such organizations, and (ii) with persons engaged in trade or commerce as defined in G.L. c. 93A, §1(b), in connection with such persons' trade or commerce.* *(f) A lawyer shall not give anything of value to any person or organization to solicit professional employment for the lawyer from a prospective client. However, this rule does not prohibit a lawyer or a partner or associate or any other lawyer affiliated with the lawyer or the lawyer's firm from requesting referrals from a lawyer referral service operated, sponsored, or approved by a bar association or from cooperating with any other qualified legal assistance organization. Such requests for referrals or cooperation may include a sharing of fee awards as provided in Rule 5.4(a)(4).*
Rule 7.4	Deletes "and Specialization" from title;" Changes language throughout: *(a) Lawyers may hold themselves out publicly as specialists in particular services, fields, and areas of law if the holding out does not include a false or misleading communication. Such holding out includes* *(1) a statement that the lawyer concentrates in, specializes in, is certified in, has expertise in, or limits practice to a particular service, field, or area of law,*

	(2) directory listings, including electronic, computer-accessed or other similar types of directory listings, by particular service, field, or area of law, and *(3) any other association of the lawyer's name with a particular service, field, or area of law.* *(b) Lawyers who hold themselves out as "certified" in a particular service, field, or area of law must name the certifying organization and must state that the certifying organization is "a private organization, whose standards for certification are not regulated by the Commonwealth of Massachusetts," if that is the case, or, if the certifying organization is a governmental body, must name the governmental body.* *(c) Except as provided in this paragraph, lawyers who associate their names with a particular service, field, or area of law imply an expertise and shall be held to the standard of performance of specialists in that particular service, field, or area. Lawyers may limit responsibility with respect to a particular service, field, or area of law to the standard of an ordinary lawyer by holding themselves out in a fashion that does not imply expertise, such as by advertising that they "handle" or "welcome" cases, "but are not specialists in" a specific service, field, or area of law.*
Rule 7.5	(b) Deletes "or other professional designation."
Rule 7.6	Does not adopt
Rule 8.1	Same as MR
Rule 8.2	Similar to MR (a), but replaces "adjudicatory…legal officer" with "or a magistrate;" Does not adopt MR (b).
Rule 8.3	Replaces "who knows" with "having knowledge" throughout; (b) Replaces "the appropriate authority" with "the Commission on Judicial Conduct;" (c) Replaces language after "or judge while" with: "serving as a member of lawyer assistance program as defined in Rule 1.6(c), to the extent that such information would be confidential if it were communicated by a client."
Rule 8.4	(e) Deletes language after "official;" Adds: *(g) fail without good cause to cooperate with the Bar Counsel or the Board of Bar Overseers as provided in Supreme Judicial Court Rule 4:01, § 3, last sentence; or* *(h) engage in any other conduct that adversely reflects on his or her fitness to practice law.*
Rule 8.5	(b)(1) adds "government" before "tribunal;" (b)(2) Replaces "the lawyer's…conduct" with "the lawyer's principal office is located shall be applied, unless the predominant effect of the conduct is in a different jurisdiction, in which case the rules of that jurisdiction shall be applied;"

Rule 9.1	*DEFINITIONS; TITLE* *The following definitions are applicable to the Rules of Professional Conduct:* *(a) Bar association: includes an association of specialists in particular services, fields, and areas of law.* *(b) "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.* *(c) "Consult" or "consultation" denotes communication or information reasonably sufficient to permit the client to appreciate the significance of the matter in question.* *(d) "Firm" or "law firm" denotes a lawyer or lawyers in a private firm, lawyers employed in the legal department of a corporation or other organization, and lawyers employed in a legal services organization. The term includes a partnership, including a limited liability partnership, a corporation, a limited liability company, or an association treated as a corporation, authorized by law to practice law for profit.* *(e) "Fraud" or "fraudulent" denotes conduct having a purpose to decide and not merely negligent misrepresentation or failure to apprise another of relevant information.* *(f) "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.* *(g) "Partner" denotes a member of a partnership and a shareholder in a law firm organized as a professional corporation.* *(h) "Person" includes a corporation, an association, a trust, a partnership, and any other organization or legal entity.* *(i) "Qualified legal assistance organization" means a legal aid, public defender, or military assistance office; or a bona fide organization that recommends, furnishes or pays for legal services to its members or beneficiaries, provided the office, service, or organization receives no profit from the rendition of legal services, is not designed to procure financial benefit or legal work for a lawyer as a private practitioner, does not infringe the individual member's freedom as a client to challenge the approved counsel or to select outside counsel at the client's expense, and is not in violation of any applicable law.* *(j) "Reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.* *(k) "Reasonable belief" or "reasonably believes" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.* *(l) "Reasonably should know" when used in reference to a lawyer denotes that a lawyer or reasonable prudence and competence would ascertain the matter in question.*

	(m) "State" includes the District of Columbia, Puerto Rico, and federal territories or possessions. *(n) "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.* *(o) "Tribunal" includes a court or other adjudicatory body.*
Rule 9.2	TITLE *These rules may be known and cited as the Massachusetts Rules of Professional Conduct (Mass. R. Prof. C.).*