

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

	MICHIGAN
Rule 2.4	Same as MR
Rule 3.1	<p>Deletes clause, “which includes...existing law;” Adds after first sentence: “A lawyer may offer a good-faith argument for an extension, modification, or reversal of existing law;” deletes “nevertheless.”</p> <p>Amendments make no changes in the current rule, but modify the accompanying commentary to clarify that a lawyer is not responsible for a client’s subjective motivation.</p>
Rule 3.3	<p>(a)(1) Changes “fact or law” to “material fact;” Adds: (2) is similar to MR but adds “controlling” before “legal authority;” deletes “in the controlling jurisdiction;” (3) is similar to MR but deletes “the lawyer’s client...lawyer;” deletes the last sentence; (b) is similar to MR: <i>If a lawyer knows that the lawyer’s client or other person intends to engage, is engaging, or has engaged in criminal or fraudulent conduct related to an adjudicative proceeding involving the client, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal;</i> Adds: (e): <i>When false evidence is offered, a conflict may arise between the lawyer’s duty to keep the client’ revelations confidential and the duty of candor to the court. Upon ascertaining that material evidence is false, the lawyer should seek to persuade the client that the evidence should not be offered or, if it has been offered, that its false character should immediately be disclosed. If the persuasion is ineffective, the lawyer must take reasonable remedial measures. The advocate should seek to withdraw if that will remedy the situation. If withdrawal from the representation is not permitted or will not remedy the effect of the false evidence, the lawyer must make such disclosure to the tribunal as is reasonably necessary to remedy the situation, even if doing so requires the lawyer to reveal information that otherwise would be protected by Rule 1.6.</i></p>
Rule 3.4	(a) Replaces first semicolon with “or;” adds at the end after semicolon: “or

	<p>counsel or assist another person to do any such act;” deletes last sentence;</p> <p>(e) Changes “in trial” to “during trial;”</p> <p>(f)(1) Deletes “a relative or;” adds to end “for the purposes of MRE 801(d)(2)(D).”</p>
Rule 3.5	<p>(b) Replaces “during the proceeding” with “”concerning a pending matter;”</p> <p>(c)(3) Replaces “involves” with “constitutes;”</p> <p>(c) is equivalent to MR (d) but changes language to: “(c) engage in undignified or discourteous conduct toward the tribunal.”</p> <p>(d) Changes language to: “(d) engage in undignified or discourteous conduct toward the tribunal.”</p>
Rule 3.6	<p>(a) Adds at the end:</p> <p><i>A statement is likely to have a substantial likelihood of materially prejudicing an adjudicative proceeding when it refers to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration, and the statement relates to:</i></p> <p><i>(1) the character, credibility, reputation, or criminal record of a party, of a suspect in a criminal investigation or of a witness, or the identity of a witness, or the expected testimony of a party or witness;</i></p> <p><i>(2) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect, or that person’s refusal or failure to make a statement;</i></p> <p><i>(3) the performance or results of any examination or test, the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;</i></p> <p><i>(4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;</i></p> <p><i>(5) information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial; or</i></p> <p><i>(6) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely as accusation and that the defendant is presumed innocent until and unless proven guilty.</i></p> <p>(b) Adds after “a lawyer” “who is participating or has participated in the investigation or litigation of a matter may state without elaboration:”</p> <p>(b)(1) Adds “the nature of” at the beginning; Deletes the language after “defense involved;”</p> <p>(b)(7) Replaces language with “in a criminal case, also:”</p> <p>(c) Replaces with:</p> <p><i>No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).</i></p>
Rule 5.5	Substantially the same as MR.
Rule 5.7	Same as MR. Adds “Michigan” to the “Rules of Professional Conduct.”
Rule 6.6	<i>Rule 6.6 Nonprofit and Court-Annexed Limited Legal Services Programs</i>

	<p>(a) <i>A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:</i></p> <p>(1) <i>is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest ; and</i></p> <p>(2) <i>is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.</i></p> <p>(b) <i>Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this rule.</i></p>
Rule 7.3	<p>(a) Adds in the beginning : “Except as otherwise allowed under this rule;” Deletes “by in-person, live telephone or real-time electronic contact” after “shall not;” Adds “with whom the lawyer has no family or prior professional relationship” after “prospective client;” Replaces “motive for the lawyer’s doing so” with “for doing so;” Deletes all language after “for doing so.”</p> <p>(b) Replaces language with:</p> <p><i>Prohibited methods of communication. For purposes of this rule, the term “solicit” includes contact that is directed to a specific recipient:</i></p> <p>(1) <i>in person, or</i></p> <p>(2) <i>by telephone or telegraph, or</i></p> <p>(3) <i>by letter or other writing, or</i></p> <p>(4) <i>by other communication.</i></p> <p>(c) Replaces language with:</p> <p><i>Allowable forms of communication. With the exception of those circumstances absolutely prohibited in subsection (d), for purposes of this rule, the term “solicit” does not include:</i></p> <p>(1) <i>letters addressed or advertising circulars distributed generally to persons who are not known to need legal services of the kind provided by the lawyer in a particular matter, but who are so situated that they might in general find such services useful, or</i></p> <p>(2) <i>Truthful and nondeceptive letters to potential clients known to face particular legal problems,” as elucidated in Shapero v Kentucky Bar Ass’n, 486 US 466 (1988). If the written solicitation concerns an action, or potential claim, that pertains to the person to whom a communication is directed, or a relative of such person, the communication shall not be transmitted less than 30 days after the injury, death, or accident occurred</i></p>

	<p><i>that has given rise to the action or potential claim.</i></p> <p><i>(3) Every written communication from a lawyer described in subsections (1) and (2) shall include the words “Advertising Material” on the outside envelope, if any, and at the beginning and ending of any written communication, unless the lawyer has a family or prior professional relationship with the recipient. If a written communication is in the form of a self-mailing brochure, pamphlet, or postcard, the words “Advertising Material” shall appear on the address panel of the brochure, pamphlet, or postcard. The requirement to include the words “Advertising Material” shall apply regardless whether the written communication is transmitted by regular United States mail, private carrier, electronically, or in any other manner.”</i></p> <p>(d) Replaces language with:</p> <p><i>A lawyer shall not solicit professional employment from a prospective client by written or recorded communication or by in-person or telephone contact even when not otherwise prohibited by paragraph (a), if:</i></p> <p><i>(1) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or</i></p> <p><i>(2) the solicitation involves coercion, duress or harassment.</i></p>
--	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Copyright © 2011 American Bar Association. All rights reserved. Nothing contained in this chart is to be considered the rendering of legal advice. It is intended for educational and informational purposes only. The Center for Professional Responsibility makes every attempt to keep its research materials as accurate as possible. If you are aware of any inaccuracies in this chart, please send your corrections or additions, along with the source of such information, to John A. Holtaway, (312) 988-5298, john.holtaway@americanbar.org