

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

	MONTANA
Preamble	<p>Revised rules as adopted by Montana Supreme Court to be effective 4/1/04 (changes to Rules 7.1, 7.2, and 8.5 effective 7/21/10; changes to Rules 1.2, 4.2 and 4.3 effective 10/1/11).</p> <p>Variations from the Model Rules are noted.</p> <p>Rules only; Montana did not adopt the Comments.</p> <p>add as Comment [1]: “A lawyer shall always pursue the truth.”</p> <p>[3], MR [2]: adds as second sentence: <i>“In performance of any functions a lawyer shall behave consistently with the requirements of honest dealings with others.”</i></p> <p>Does not use word zealously.</p> <p>Penultimate sentence adds “with requirements <u>under these rules</u>”</p> <p>Last sentence ends at “about them”</p> <p>[9], MR [8]: “... citizen are <i>usually</i> harmonious. Thus, when an opposing party is well represented, a A lawyer can be a <u>dedicated</u> advocate on behalf of a client, even an unpopular one, but in doing so must comply with these Rules of Professional Conduct and at the same time assume that justice is being done.” Does not use “zealous.”</p> <p>[10], MR [9]: deletes last part of 2nd sentence. Does not use “zealously.”</p> <p>[11], MR [10]: deletes “largely” in first and last sentences</p> <p>[12], MR [11]: deletes first sentence.</p> <p>[14], MR [13]: adds after second sentence: <i>All lawyers understand that, as officers of the court, they have a duty to be truthful, which engenders trust in both the profession and the rule of law. The Rules of Professional Conduct, when properly applied, serve to define that relationship. Trust in the integrity of the system and those who operate it is a basic necessity of the rule of law; accordingly truthfulness must be the hallmark of the legal profession, and the stock-in-trade of all lawyers.</i></p>
Scope	<p>Does not designate separate Scope section.</p> <p>[21], MR [20], last sentence: The fact that a Rule is a <u>provides</u> just basis for a lawyer’s self-assessment <u>by a lawyer of his/her conduct</u> or a basis for sanctioning a lawyer under the administration of a disciplinary authority <u>process</u> does not imply that an antagonist in a collateral proceeding or transaction <u>opposing party or lawyer</u> has standing to seek enforcement of the Rules <u>in a collateral proceeding or transaction outside of the disciplinary process.</u></p> <p>Does not include last sentence of MR [20]</p> <p>Does not include MR [21]</p>
Rule 1.0	<p>(b), adds definition of “Bona fide.” See 3.1.</p> <p>(c), does not delete definition of “consult.” See 1.17.</p> <p>(i), MR (g); inserts “law” before “partnership.”</p> <p>(p), MR (n), last sentence: A “signed” writing includes <u>the electronic equivalent of a signature, such as an electronic sound, symbol or process, which is attached to or logically associated with</u> a writing and executed or adopted by a person with the intent to sign the writing.</p>

Rule 1.1	Identical
Rule 1.2 Effective 10/1/2011	<p>(c) Adds at the end: <i>... in writing.</i> <i>(1) The client’s informed consent must be confirmed in writing unless:</i> <i>(i) the representation of the client consists solely of telephone consultation;</i> <i>(ii) the representation is provided by a lawyer employed by a nonprofit legal services program or participating in a nonprofit court-annexed legal services program and the lawyer’s representation consists solely of providing information and advice or the preparation of court-approved legal forms; or</i> <i>(iii) the court appoints the attorney for a limited purpose that is set forth in the appointment order.</i> <i>(2) If the client gives informed consent in writing signed by the client, there shall be a presumption that:</i> <i>(i) the representation is limited to the attorney and the services described in the writing; and</i> <i>(ii) the attorney does not represent the client generally or in matters other than those identified in the writing.</i></p>
Rule 1.3	Identical
Rule 1.4	Identical
Rule 1.5	Has (b) as proposed by Ethics 2000 in 8/01. (d)(1): uses “maintenance” in place of “alimony”
Rule 1.6	Does not have (b)(2) or (3)
Rule 1.7	Identical
Rule 1.8	<p>includes as (a)(2): (2) in matters in which a lawyer wishes to assert a retaining lien against client property, papers or materials in the lawyer's possession to secure payment for the lawyer's services and costs advanced relating to such property, papers or materials, <u>a written</u> agreement for such a lien shall expressly set forth the limitations contained in paragraph (i)(3); (c): ends at “or other relative” includes as (e)(3): (3) a lawyer may, for the sole purpose of providing basic living expenses, guarantee a loan from a regulated financial institution whose usual business involves making loans if such loan is reasonably needed to enable the client to withstand delay in litigation that would otherwise put substantial pressure on the client to settle a case because of financial hardship rather than on the merits, provided the client remains ultimately liable for repayment of the loan without regard to the outcome of the litigation and, further provided that neither the lawyer nor anyone on his/her behalf offers, promises or advertises such financial assistance before being retained by the client. (f)(1): adds “written” to “informed consent” replaces (i)(1) with: (1) may acquire and assert a charging lien only against causes of action or counterclaims in litigation pursuant to and only to the extent specified in MCA 37-61-420(2); such a charging lien does not extend to other client property, papers or materials in the lawyer's possession, to any matter not in litigation, or to any matter otherwise not covered by the specific language of MCA 37-61-420(2); adds as (i)(3) (3) may not acquire or assert a retaining lien to secure payment due for</p>

	the lawyer's services against any client property, papers or materials other than those related to the matter for which payment has not been made and, upon termination of representation, shall deliver to the client any client property, papers or materials reasonably necessary to protect the client's interest in the matter to which the property, papers or materials relate as provided in Rule 1.16(d).
Rule 1.9	Identical
Rule 1.10	added screening as proposed in the August E2k 2001 report.
Rule 1.11	Identical
Rule 1.12	add reference to "settlement master" in addition to mediator, arbitrator or other third party neutral.
Rule 1.13	Did not make Cheek Commission changes
Rule 1.14	Identical
Rule 1.15	Did not add new MR (b) and (c) (a): second sentence is different: Funds shall be kept in accordance with Rule 1.18 and this Rule (b) same as MR (d) (c): did not make changes; kept old MR (c)
Rule 1.16	1.16(d), last sentence replaced with: "A lawyer is entitled to retain and is not obliged to deliver to a client or former client papers or materials personal to the lawyer or created or intended for internal use by the lawyer except as required by the limitations on the retaining lien in Rule 1.8(i). Except for those client papers which a lawyer may properly retain under the preceding sentence, a lawyer shall deliver either the originals or copies of papers or materials requested or required by a client or former client and bear the copying costs involved."
Rule 1.17	For MR, see 1.19. MT has as Rule 1.17 a rule on Government Employment: "An attorney employed <u>full time by</u> the State of Montana or <u>a political subdivision</u> shall not accept other employment during the course of which it would be possible to use or otherwise rely on information obtained by reason of government employment that is injurious, confidential or privileged and not otherwise discoverable."
Rule 1.18	have a rule here on IOLTA
Rule 1.19	MR 1.17. adopted the MR but did not have the draft with "area of practice" added at the time they reviewed this.
Rule 1.20	MR 1.18. replaced references to "discuss" with "consults with or has had consultations with." Hence, added the word "consults" back in the Rule 1.0. (d): as proposed by Ethics 2000 in 8/01
Rule 2.1	Identical
Rule 2.2	Same as MR 2.3
Rule 2.3	Same as MR 2.4. added reference in (a) to "settlement masters." (b): requires that all parties, not just unrepresented parties or those the lawyer knows do not understand the lawyer's role, be informed of the lawyer's focused role.
Rule 2.4	Identical
Rule 3.1	rule split into (a) and (b). (b) is the same as the 2 nd half of the MR.

	(a) reads: “A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein: (1) without having first determined through diligent investigation that there is a bona fide basis in law and fact for the position to be advocated; (2) for the purpose of harassment, advancement of a nonmeritorious claim, or solely to gain leverage; or (3) to extend, modify, or reverse existing law unless a bona fide basis in law and fact exists for advocating doing so.”
Rule 3.2	Identical
Rule 3.3	Identical
Rule 3.4	Identical
Rule 3.5	kept old MR. Did not adopt E2k changes.
Rule 3.6	Identical
Rule 3.7	Identical
Rule 3.8	adds to end of last sentence in (f): “consistent with the Confidential Criminal Justice Information Act”
Rule 3.9	Identical
Rule 4.1	(b): Did not delete “to a third person”
Rule 4.2 Effective 10/1/2011	Adds (b): <i>An otherwise unrepresented person 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 unless the opposing party or lawyer has been provided with a written notice of appearance under which, or a written notice of time period during which, he or she is to communicate only with the limited representation lawyer as to the subject matter within the limited scope of the representation.</i>
Rule 4.3 Effective 10/1/2011	Adds (b): <i>An otherwise unrepresented person 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 unless the opposing party of lawyer has been provided with a written notice of appearance under which, or a written notice of time period during which, he or she is to communicate only with the limited representation lawyer as to the subject matter within the limited scope of the representation.</i>
Rule 4.4	(b): refers to “a writing” rather than “a document,” since writing is defined in 1.0 to include documents, faxes and email. Does not include “relating to the representation of the lawyer’s client”
Rule 5.1	(c): adds lawyer “within a firm” and another lawyer “in the firm’s” adds in (c)(1): ratifies “or ignores” the conduct involved.
Rule 5.2	Identical
Rule 5.3	Identical
Rule 5.4	Identical
Rule 5.5	still being reviewed current rule same as old model rule

Rule 5.6	Identical
Rule 5.7	do not have this rule
Rule 6.1	Does not have “Voluntary” in title First paragraph, second sentence: does not have “aspire”
Rule 6.2	Identical
Rule 6.3	Identical
Rule 6.4	Identical
Rule 6.5	Identical
Rule 7.1	<p>A lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services. A communication is false or misleading if it contains a material misrepresentation of fact or law.; <u>A misleading communication includes, but is not limited to those that:</u></p> <p>(a) omits a fact <u>as a result of which necessary to make the statement considered as a whole net is materially misleading;-</u></p> <p>(b) <u>is likely to create an unjustified expectation about results the lawyer can achieve;</u></p> <p>(c) <u>proclaims results obtained on behalf of clients, such as the amount of a damage award or the lawyer’s record in obtaining favorable verdicts or settlements, without stating that past results afford no guarantee of future results and that every case is different and must be judged on its own merits;</u></p> <p>(d) <u>states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law;</u></p> <p>(e) <u>compares the quality of a lawyer’s or a law firm’s services with other lawyers’ services, unless the comparison can be factually substantiated;</u></p> <p>(f) <u>advertises for a specific type of cases concerning which the lawyer has neither experience nor competence;</u></p> <p>(g) <u>indicates an area of practice in which the lawyer routinely refers matters to other lawyers, without conspicuous identification of such fact;</u></p> <p>(h) <u>contains any paid testimonial about, or endorsement of, the lawyer without conspicuous identification of the fact that payments have been made for the testimonial of endorsement;</u></p> <p>(i) <u>provides an office address for an office staffed only part time or by appointment only, without conspicuous identification of such fact;</u></p> <p>(k) <u>states that legal services are available on a contingent or no-recovery, no-fee basis without stating conspicuously that the client may be responsible for costs or expenses, if that is the case; or</u></p> <p>(l) <u>advertises for legal services without identifying the jurisdictions in which the lawyer is licensed to practice.</u></p>
Rule 7.2	<p>(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded, or electronic communication, including public media.</p> <p>(b) A lawyer shall not give anything of value to a person for recommending the lawyer’s services except that a lawyer may:</p> <p>(1) pay the reasonable costs of advertisements or communications permitted by this Rule;</p>

	<p>(2) pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority; and;</p> <p>(3) pay for a law practice in accordance with Rule 1.19.</p> <p>(c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.</p>
Rule 7.3	<p>adds two provisions in (b): “(3) the lawyer knows or reasonably should know that the physical, emotional, or mental state of the person is such that the person cannot exercise reasonable judgment in employing a lawyer; (4) the lawyer reasonably should know that the person is already represented by another lawyer.”</p> <p>adds at the end of (d): “Lawyers who participate in a legal services plan must reasonably assure that the plan sponsors are in compliance with Rules 7.1, 7.2, and 7.3(b). See Rule 8.4(a).”</p>
Rule 7.4	<p>adds at the end of (a): <u>.”A lawyer may also communicate that his/her practice is limited to or concentrated in a particular field of law, if such communication does not imply an unwarranted expertise in the field so as to be false or misleading under Rule 7.1.”</u></p>
Rule 7.5	<p>adds reference to “website” as an example of a professional designation.</p>
Rule 7.6	<p>did not propose adoption of this rule because they feel other rules address the problem.</p>
Rule 8.1	<p>Identical</p>
Rule 8.2	<p>Identical</p>
Rule 8.3	<p>Identical</p>
Rule 8.4	<p>Identical</p>
Rule 8.5	<p>A lawyer who is not an active member in good standing of the State Bar of Montana and who seeks to practice in any state or federal court located in this State <i>pro hac vice</i>, by motion, or before being otherwise admitted to the practice of law in this State, shall, prior to engaging in the practice of law in this State, certify in writing and under oath to this Court that, except as to Rules 6.1 through 6.4, he or she will be bound by these Rules of Professional Conduct in his or her practice of law in this State and will be subject to the disciplinary authority of this State. A copy of said certification shall be mailed, contemporaneously, to the business offices of the State Bar of Montana in Helena, Montana.</p> <p>A lawyer not admitted to practice in this State is subject to the disciplinary authority of this State for conduct that constitutes a violation of these Rules and that:</p> <p>(1) involves the practice of law in this State by that lawyer; or (2) involves that lawyer holding himself or herself out as practicing law in this State; or (3) <u>advertises, solicits, or offers legal services in this State; or</u> (4) involves the practice of law in this State by another lawyer over whom this that lawyer has the obligation of supervision or control.</p>

As of April, 2011

<p><u>A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction on which the lawyer reasonably believes that predominant effect of the lawyer's conduct will occur.</u></p>

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