

**Comparison of Newly Adopted New Hampshire Rules of Professional Conduct
with ABA Model Rules**

	<p align="center">NEW HAMPSHIRE</p> <p>New rules as adopted by New Hampshire Supreme Court to be effective 1/1/08. Variations from the Model Rules are noted. Rules only; comment comparison not included.</p>
<p>Preamble and Scope</p>	<p>Does not adopt.</p> <p align="center"><i>Statement Of Purpose</i></p> <p><i>The Rules of Professional Conduct constitute the disciplinary standard for New Hampshire lawyers. Together with law and other regulations governing lawyers, the Rules establish the boundaries of permissible and impermissible lawyer conduct.</i></p> <p><i>The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the context of legal representation and of law itself. Some of the Rules are imperatives, expressed by the terms "shall" or "shall not". Others, generally expressed by the term "may", are permissive and define areas in which the lawyer may exercise professional judgment.</i></p> <p><i>The Rules are not designed to be a basis for civil liability. The purpose of the Rules can be subverted when the Rules are invoked by opposing parties as procedural weapons. Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. Violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer from a position or from pending litigation. Nevertheless, as the Rules establish a standard of conduct for lawyers, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct.</i></p> <p><i>The Rules of Professional Conduct are promulgated and amended by the Supreme Court of the State of New Hampshire with due input from members of the New Hampshire Bar and interested members of the public. Each Rule is published together with the applicable ABA Comment, as adopted by the American Bar Association in conjunction with its Model Rules of Professional Conduct. Preceding the ABA Comment may be found a New Hampshire Comment, which may describe distinctions between the Rule as adopted in New Hampshire and the respective ABA Model Rule. The ABA and New Hampshire Comments are intended to be interpretive, not mandatory. The New Hampshire Comments are provided by the Ethics Committee of the New Hampshire Bar Association.</i></p> <p><i>Lawyers have traditionally aspired to higher standards of professionalism than should be made mandatory in the Rules. Professionalism encompasses civility, competence, conscience, contribution to the quality of the legal system including equal access to the courts, and public service.</i></p> <p align="center"><i>New Hampshire Comment</i></p> <p><i>The Statement of Purpose replaces the ABA Model Preamble and Scope in</i></p>

	<p><i>their entirety. The New Hampshire Supreme Court has not adopted the existing ABA Model Preamble and Scope, so that there is no base text to amend. The NHBA Ethics Committee found that, in both the existing and the proposed ABA Model Preamble and Scope, the following defects exist:</i></p> <p><i>Much of the Preamble and Scope consists of imprecise restatements or summaries of the Rules, which are generally unnecessary, potentially confusing, or both.</i></p> <p><i>It is inappropriate for the Statement of Purpose to attempt to codify when the Rules should or should not be used by disciplinary bodies, or how degrees of punishment for violations should be determined.</i></p> <p><i>Portions of the Preamble and Scope are aspirational in nature, which runs the risk of converting goals into mandates. The Rules will succeed better if the distinction between worthy aspirations and basic mandates is kept clear.</i></p> <p><i>The length and lack of clarity in the wording of the Preamble and Scope materially diminish their utility to their readers.</i></p>
Rule 1.0	Same as MR
Rule 1.1	<p>First sentence of MR is (a). Changes second part of MR to:</p> <p><i>(b) Legal competence requires at a minimum: (1) specific knowledge about the fields of law in which the lawyer practices; (2) performance of the techniques of practice with skill; (3) identification of areas beyond the lawyer's competence and bringing those areas to the client's attention; (4) proper preparation; and (5) attention to details and schedules necessary to assure that the matter undertaken is completed with no avoidable harm to the client's interest. (c) In the performance of client service, a lawyer shall at a minimum: (1) gather sufficient facts regarding the client's problem from the client, and from other relevant sources; (2) formulate the material issues raised, determine applicable law and identify alternative legal responses; (3) develop a strategy, in consultation with the client, for solving the legal problems of the client; and (4) undertake actions on the client's behalf in a timely and effective manner including, where appropriate, associating with another lawyer who possesses the skill and knowledge required to assure competent representation.</i></p>
Rule 1.2	<p>(a) Adds reference to paragraph (e); deletes everything after “carry out the representation;”</p> <p>(c) Deletes everything after “informed consent;”</p> <p>Adds (e), (f) and (g):</p> <p><i>(e) It is not inconsistent with the lawyer’s duty to seek the lawful objectives of a client through reasonably available means, for the lawyer to accede to reasonable requests of opposing counsel that do not prejudice the rights of the client, avoid the use of offensive or dilatory tactics, or treat opposing counsel or an opposing party with civility.</i></p> <p><i>(f) In addition to requirements set forth in Rule 1.2(c),</i></p> <p><i>(1) a lawyer may provide limited representation to a client who</i></p>

	<p><i>is or may become involved in a proceeding before a tribunal (hereafter referred to as litigation), provided that the limitations are fully disclosed and explained, and the client gives informed consent to the limited representation. The form set forth in section (g) of this Rule has been created to facilitate disclosure and explanation of the limited nature of representation in litigation. Although not prohibited, the provision of limited representation to a client who is involved in litigation and who is entitled as a matter of law to the appointment of counsel is discouraged.</i></p> <p><i>(2) a lawyer who has not entered an applicable limited appearance, and who provides assistance in drafting pleadings, shall advise the client to comply with any rules of the tribunal regarding participation of the lawyer in support of a pro se litigant.</i></p> <p>(g) Sample form.</p>
Rule 1.3	Same as MR
Rule 1.4	<p>(a)(1) Deletes clause, “as required by Rule 1.0(e);”</p> <p>(b) Changes “a matter” to “the legal and practical aspects of a matter;” adds “and alternative courses of action” after “matter;” adds “the such explanation is” before “reasonably necessary.”</p>
Rule 1.5	<p>(a) Changes “make an agreement” to “enter into an agreement;” adds “illegal or” before “unreasonable;”</p> <p>Replaces MR (b) with:</p> <p><i>(b) When the lawyer has not regularly represented the client, the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.</i></p> <p>(c) Changes “paragraph...law” to “law or these rules;” changes “to be deducted from the recovery” to “for which the client will be liable whether or not the client is the prevailing party;” deletes entire sentence: “The agreement...party;”</p> <p>(d)(1) Combines MR (d) and first part of (d)(1), up until “relations matter,” and adds: “<i>which is contingent on:</i></p> <p><i>a. securing a divorce;</i></p> <p><i>b. establishing or modifying a child support, alimony, property division, or other financial order; or</i></p> <p><i>c. obtaining any specific non-financial relief.”</i></p> <p>Does not adopt (d)(2) or (e);</p> <p>(f)(1) is equivalent to MR but changes wording to:</p> <p><i>(1) the division is made either:</i></p> <p><i>a. in reasonable proportion to the services performed or responsibility or risks assumed by each, or</i></p> <p><i>b. based on an agreement with the referring lawyer;</i></p> <p>(f)(2) is equivalent to MR but changes wording to:</p>

	<p><i>(2) in either case above, the client agrees in a writing signed by the client to the division of fees;</i></p> <p>(f)(3) is equivalent to MR but changes wording to:</p> <p><i>(3) in either case, the total fee charged by all lawyers is not increased by the division of fees and is reasonable.</i></p>
Rule 1.6	<p>(b): same as former MR</p> <p>(b)(1): adds to end “or to prevent the client from committing a criminal act that the lawyer believes is likely to result in substantial injury to the financial interest or property of another; or</p> <p>Does not have MR (b)(2) or (3)</p> <p>(b)(2) – (4): same as MR (b)(4) - (6)</p> <p>Does not adopt 2003 Task Force changes</p>
Rule 1.7	Same as MR
Rule 1.8	Same as MR
Rule 1.9	Same as MR
Rule 1.10	<p>Combines (a) and (a)(1), and deletes (a)(2), and paragraphs (i), (ii), and (iii). Did not adopt (d).</p> <p>Comments:</p> <p>[2] Refers to “Paragraph (a)” instead of (a)(1) in second to last sentence, and deletes reference to Rule 1.10(a)(2)</p> <p>NH Rules Comments [7] and [8] are identical to MR [11]</p> <p>Does not adopt [7] through [10]</p>
Rule 1.11	<p>(e)(i) is similar to MR (e)(1) but rearranges order of words:</p> <p><i>(1) any judicial or other proceeding involving a specific party or parties, including an application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other proceeding; and</i></p>
Rule 1.12	Deletes languages after “third-party neutral.”
Rule 1.13	<p>Same as MR</p> <p>Adopts 2003 Task Force changes</p>
Rule 1.14	Same as MR
Rule 1.15	Same as MR
Rule 1.16	<p>Adds paragraph (e):</p> <p><i>(e) The representation of a lawyer having entered a limited appearance as authorized by the tribunal under a limited representation agreement under Rule 1.2(f)(1), shall terminate upon completion of the agreed representation, without the necessity of leave of court, upon providing notice of completion of the limited representation to the court.</i></p>
Rule 1.17	<p>(a) Replaces language after “sold” with: “within the State of New Hampshire;”</p> <p>(b) Adds parentheses after “practice:” “(subject to the clients’ rights under Rule 1.17(c)(2));”</p> <p>(c) Replaces “seller’s” with “active and inactive;” adds between “clients” and “regarding:” “of the practice or practice area being sold;”</p> <p>Does not adopt last sentence of MR (c);</p> <p>(d) is similar to the last paragraph of MR (c) but adds “described in section</p>

	<p>Adds (e):</p> <p><i>(e) If a client cannot be given notice described in section (c), the representation of that client shall be transferred to the successor lawyer or law firm for the limited purpose of protecting the interests of that client as and to the same extent as the selling or prior lawyer was required to do by these Rules, and the successor lawyer or law firm shall have a continuing obligation to reasonably attempt to provide the client with such notice to the same extent as may be required by these Rules; and</i></p> <p>Adds (f):</p> <p><i>(f) The successor lawyer or law firm shall take possession of all the inactive or archival files of the practice or practice area being sold, and shall store, handle, or destroy them in accordance with the normal operating procedures of the successor lawyer or law firm and these Rules. Notice of the transfer of the inactive and archival files shall be published in an appropriate newspaper of local circulation and shall be provided to the New Hampshire Bar Association.</i></p>
Rule 1.18	<p>(b) Changes “had discussions with” to “received and reviewed information from;” deletes “learned in the consultation;”</p> <p>(d)(2)(a) and (b) are equivalent to MR (d)(2)(i) and (ii).</p>
Rule 2.1	Same as MR
Rule 2.2	[N/A]
Rule 2.3	Same as MR
Rule 2.4	Same as MR
Rule 3.1	Same as MR
Rule 3.2	Same as MR
Rule 3.3	Order of paragraphs (c) and (d) are reversed: (c) is the same as MR (d) and (d) is the same as MR (c).
Rule 3.4	Same as MR
Rule 3.5	Same as MR
Rule 3.6	<p>Adds (b): <i>A statement referred to in paragraph (a) will more likely than not have such an effect 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: (1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness; (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; (3) the performance or results of any examination or test or 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; (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; or</i></p>

	<p><i>(5) information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and would if disclosed create a substantial risk of prejudicing an impartial trial.</i></p> <p>State Rule (c) identical to MR (b) Deletes MR (c)</p>
Rule 3.7	Same as MR
Rule 3.8	Does not adopt (g) or (h)
Rule 3.9	Replaces reference to Rule 3.4(c) with Rule 3.4(d).
Rule 4.1	Same as MR
Rule 4.2	<p>Same as MR but adds to end:</p> <p><i>An otherwise unrepresented party to whom limited representation is being provided or has been provided in accordance with Rule 1.2(f)(1) is considered to be unrepresented for purposes of this Rule, except to the extent the limited representation lawyer provides other counsel written notice of a time period within which other counsel shall communicate only with the limited representation lawyer.</i></p>
Rule 4.3	Same as MR
Rule 4.4	<p>Replaces language with :</p> <p><i>(a) In representing a client, a lawyer shall not take any action if the lawyer knows or it is obvious that the action has the primary purpose to embarrass, delay or burden a third person.</i></p> <p><i>(b) A lawyer who receives materials relating to the representation of the lawyer's client and knows that the material was inadvertently sent shall promptly notify the sender and shall not examine the materials. The receiving lawyer shall abide by the sender's instructions or seek determination by a tribunal.</i></p>
Rule 5.1	Same as MR
Rule 5.2	Same as MR
Rule 5.3	<p>(a) Changes "a partner" to "each partner;"</p> <p>(b) Changes "a lawyer" to "each lawyer."</p>
Rule 5.4	Same as MR
Rule 5.5	Same as MR
Rule 5.6	Same as MR
Rule 5.7	Same as MR
Rule 6.1	Changes number of hours to thirty throughout.
Rule 6.2	Same as MR
Rule 6.3	Same as MR
Rule 6.4	Changes "benefitted by" to "affected by."
Rule 6.5	<p>(a) Adds "the New Hampshire Bar Association" before "a nonprofit organization;" replaces "short-term...client" with "one-time consultation with a client;"</p> <p>Adds:</p> <p><i>(c) Rules 1.6 and 1.9(c) are applicable to a representation governed by</i></p>

	<i>this Rule.</i>
Rule 7.1	<p>Replaces language after “lawyer’s services” with: <i>Without limiting the generality of the foregoing, a communication is false or misleading if it:</i></p> <ul style="list-style-type: none"> <i>(a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement, considered in light of all of the circumstances, not materially misleading;</i> <i>(b) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the rules of professional conduct or other law; or</i> <i>(c) compares the lawyer’s services with other lawyers’ services, unless the comparison can be factually substantiated.</i>
Rule 7.2	<p>(b) Replaces everything after (b)(1) with:</p> <ul style="list-style-type: none"> <i>(2) pay a fee charged by an organization that is recognized by the Internal Revenue Service as exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code; and</i> <i>(3) purchase a law practice in accordance with Rule 1.17.”</i>
Rule 7.3	<p>(a) Adds “initiate” before “by in-person;” adds:</p> <ul style="list-style-type: none"> <i>(3) is an employee, agent, or representative of a business, non-profit or governmental organization not known to be in need of legal services in a particular matter, and the lawyer seeks to provide services on behalf of the organization; or</i> <i>(4) is an individual who regularly requires legal services in a commercial context and is not known to be in need of legal services in a particular matter.</i> <p>(b) Replaces language with:</p> <ul style="list-style-type: none"> <i>(b) A lawyer shall not communicate or knowingly permit any communication to a prospective client for the purpose of obtaining professional employment if:</i> <p>(b)(1) and (b)(2) are the same as MR but NH adds:</p> <ul style="list-style-type: none"> <i>(b)(3) 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.</i> <p>(c) Deletes “Material” after “Advertising” and replaces “paragraphs...(a)(2)” with “subsection (a);”</p> <p>Does not adopt MR (d) but adds instead:</p> <ul style="list-style-type: none"> <i>(d) The following types of direct contact with prospective clients shall be exempt from subsection (a):</i> <i>(i) participation in a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person, live voice or other real-time contact to solicit memberships or subscriptions for the plan from persons who are</i>

	<p><i>not known to need legal services in a particular matter covered by the plan.</i></p> <p><i>(ii) initiation of contact for legal services by a non-profit organization.</i></p> <p><i>(iii) contact of those the lawyer is permitted under applicable law to seek to join in litigation in the nature of a class action, if success in asserting rights or defenses of the litigation is dependent upon the joinder of others; and</i></p> <p><i>(iv) requests by a lawyer or the lawyer's firm for referrals from a lawyer referral service operated, sponsored or approved by a bar association, or cooperation with any other qualified legal assistance organization.</i></p>
Rule 7.4	<p>First paragraph is similar to MR (a) but adds to end: "A lawyer shall not state or imply that the lawyer is a specialist except as follows;"</p> <p>(a) is the same as MR (b);</p> <p>(b) is the same as MR (c);</p> <p>Adds:</p> <p><i>(c) a lawyer who is certified as a specialist in a particular field of law by an organization that has been accredited by the American Bar Association may hold himself or herself out as a specialist certified by such organization.</i></p> <p><i>Does not adopt MR (d).</i></p>
Rule 7.5	<p>(b) Deletes language after "jurisdiction;"</p> <p>Adds:</p> <p><i>(c) Identification of the lawyers in an office of a law firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.</i></p> <p>(d) is MR (c);</p> <p>(e) is MR (d).</p>
Rule 7.6	Does not adopt
Rule 8.1	<p>Adds:</p> <p>(c) fail to attend a hearing when ordered to do so by a disciplinary authority.</p>
Rule 8.2	Same as MR
Rule 8.3	(c) Replaces language after "or information" with: "received by lawyers during the course of their work on behalf of the New Hampshire Bar Association Ethics or Lawyers Assistance Committees."
Rule 8.4	<p>Does not adopt MR (d);</p> <p>(d) is similar to MR (e) but deletes language after "official;"</p> <p>(e) is the same as MR (f).</p>
Rule 8.5	(a) Replaces "A lawyer not admitted in this jurisdiction" with "A lawyer admitted in another jurisdiction but not admitted in this jurisdiction."

As of February 17, 2010

variations from the ABA Model Rules should not be construed as representing policy of the American Bar Association. The charts are current as of the date shown on each. A jurisdiction may have amended its rules or proposals since the time its chart was created. If you are aware of any inaccuracies in the charts, please send your corrections or additions and the source of that information to John Holtaway, (312) 988-5298, jholtaway@staff.abanet.org.