

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

	<b>OKLAHOMA</b>
	New rules as adopted by Oklahoma Supreme Court to be effective 1/1/08. Variations from the Model Rules are noted. Rules only; comment comparison not included.
Preamble	Same as MR
Scope	<p>[20] Deletes “itself” before “give rise;” deletes sentence: “In addition...litigation;” replaces language after “enforcement of the Rule” with:  <i>Accordingly, nothing in the Rules should be deemed to augment any substantive legal duty of lawyers or the extra-disciplinary consequences of violating such a duty. 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 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. The lawyer’s exercise of discretion not to disclose information under Rule 1.6 should not be subject to reexamination. Permitting such reexamination would be incompatible with the general policy of promoting compliance with law through assurances that communications will be protected against disclosure.</i></p> <p>Adds to end:  <i>[22] Under the heading Oklahoma Modifications, changes from the ABA Model Rules of Professional Conduct and the related Comments are noted.</i></p>
Rule 1.0	Same as MR
Rule 1.1	Same as MR
Rule 1.2	Changes (b) to: “The substance of (b) is in modified Comment [5].”
Rule 1.3	Same as MR
Rule 1.4	Same as MR
Rule 1.5	(e)(2) Deletes clause, “including the share each lawyer will receive.”
Rule 1.6	(b)(2) to prevent the client from committing: (i) a crime; or (b)(2)(ii): same as MR (b)(2) but deletes “to prevent the client from

	<p>committing” and “crime or”</p> <p>(b)(3): adds to end “provided that the lawyer has first made reasonable efforts to contact the client so that the client can rectify such criminal or fraudulent act but the lawyer has been unable to do so, or the lawyer has contacted the client and called upon the client to rectify such criminal or fraudulent act and the client has refused or has been unable to do so”</p> <p>(b)(6): adds “as permitted or required” to beginning and “these Rules” before “other”</p> <p><b>Adopts 2003 Task Force changes</b></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). Adds as (e):</p> <p style="padding-left: 40px;">“Where a lawyer is prohibited from engaging in certain transactions under Rule 1.8, paragraph (k) of that Rule, and not this Rule, determines whether that prohibition also applies to other lawyers associated in a firm with the personally prohibited lawyer.”</p> <p>Comments: [7] is identical to MR [11] Does not adopt [7] through [10] or [12]</p>
Rule 1.11	Same as MR
Rule 1.12	Same as MR
Rule 1.13	<p>Same as MR</p> <p><b>Adopts 2003 Task Force changes</b></p>
Rule 1.14	Same as MR
Rule 1.15	<p>(e) Changes language to:</p> <p style="padding-left: 40px;"><i>When in connection with a representation, a lawyer possesses funds or other property in which both the lawyer and another person claim interests, the funds or other property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved, and the undisputed portion of the funds shall be promptly distributed.</i></p> <p>Adds (f)-(o):</p> <p>(f) <i>Where funds or other items of property entrusted to a lawyer have been impressed with a specific purpose as to their use, they shall retain that specific character unless otherwise authorized by a client or third person or prohibited by law. Where funds are impressed with a specific purpose, a lawyer may not subject them to a counterclaim, set off for fees, or subject them to a lien.</i></p> <p>(g) <i>Effective January 1, 2009, all members of the Bar who are required under the Oklahoma Rules of Professional Conduct, to maintain a trust account for the deposit of clients’ funds entrusted to said lawyer, shall do so and furnish</i></p>

*information regarding said account(s) as hereinafter provided. Each member of the Bar shall provide the Oklahoma Bar Association with the name of the bank or banks in which the lawyer carries any trust account, the name under which the account is carried and the account number. The lawyer or law firm shall provide such information within thirty (30) days from the date that said account is opened, closed, changed, or modified. The Oklahoma Bar Association will provide on-line access and /or paper forms for members to comply with these reporting requirements. Provision will be made for a response by lawyers who do not maintain a trust account and the reason for not maintaining said account. Information received by the Association as a result of this inquiry shall remain confidential except as provided by the Rules Governing Disciplinary Proceedings. Failure of any lawyer to respond giving the information requested by the Oklahoma Bar Association, Oklahoma Bar Foundation or the Office of the General Counsel of the Oklahoma Bar Association will be grounds for appropriate discipline.*

*(h) A lawyer or law firm that holds funds of clients or third parties in connection with a representation shall create and maintain an interest-bearing demand trust account and shall deposit therein all such funds to the extent permitted by applicable banking laws, that are nominal in amount or to be held for a short period of time in compliance with the following provisions:*

*(1) the account may be established with any bank or savings and loan association authorized by federal or state law to do business in Oklahoma and insured by the Federal Deposit Insurance Corporation;*

*(2) the rate of interest payable on the account shall not be less than the rate paid by the depository institution to regular, non-lawyer depositors. Higher rates offered by the institution to customers whose deposits exceed certain time or quantity minimums, such as those offered in the form of certificates of deposit, may be obtained by a lawyer or law firm so long as there is no impairment of the right to withdraw or transfer principal immediately (except as accounts generally may be subject to statutory notification requirements), even though interest may be sacrificed thereby;*

*(3) the depository institution shall be directed:*

*(i) to remit interest or dividends, as the case may be, on the average monthly balance in the account, at least quarterly, to the Oklahoma Bar Foundation, Inc. ("Foundation"); and*

*(ii) to transmit with each remittance to the Foundation a statement showing the name of the lawyer or the law firm for whom the remittance is sent, the account number, the period of time covered by the statement, the rate of interest applied and the average daily balance of the account;*

*(4) the lawyer or law firm shall not deposit funds belonging to the*

*lawyer or law firm in the account, except that funds necessary to comply with the depository institution's minimum balance requirements for the maintenance of the account or funds needed to pay applicable fees and service charges may be deposited therein;*

*(5) in determining whether to use the interest-bearing account herein specified, the lawyer shall consider whether the funds to be invested could be utilized to provide a positive net return to the client, taking into consideration the following factors:*

*(i) the amount of interest that the funds would earn during the period they are expected to be deposited;*

*(ii) the cost of establishing and administering the account, including the cost of the lawyer's services and the cost of preparing any tax reports required for interest accruing to a client's benefit; and*

*(iii) the capability of financial institutions to calculate and pay interest to individual clients;*

*(6) in the event that any client asserts a claim against a lawyer based upon such lawyer's determination to place client advances in the account because such balance is nominal in amount or to be held for a short period of time, the Foundation shall, upon written request by such lawyer, review such claim and either:*

*(i) approve such claim (if such balances are found not to be nominal in amount or short in duration) and remit directly to the claimant any sum of interest remitted to the Foundation on account of such funds; or*

*(ii) reject such a claim (if such balances are found to be nominal in amount or short in duration) and advise the claimant in writing of the grounds therefor. In the event of any subsequent litigation involving such a claim, the Foundation shall interplead any such sum of interest and shall assume the defense of the action;*

*(7) The requirements of subparagraph (h) shall not apply if:*

*(i) it is not feasible for the lawyer or law firm to establish an interest-bearing trust account for reasons beyond the control of the lawyer or law firm, such as the unavailability of a financial institution which offers such an account in the community where the principal office of the lawyer or law firm is situated, or*

*(ii) those financial institutions which offer such an account in the community where the principal office of the lawyer or law firm is situated impose fees and service charges that routinely exceed the interest generated by the account; and*

*(8) Information necessary to determine compliance or justifiable reason for noncompliance with the requirements of subparagraph (h)*

*shall be included in the reporting required by subparagraph (g) of this rule. If it appears that a lawyer or law firm has not complied where it is feasible to do so, the matter may be referred to the office of the General Counsel of the Oklahoma Bar Association for appropriate investigation and proceedings.*

*(i) When a lawyer receives funds subject to this rule that are not required to be deposited in an interest bearing account payable to the Oklahoma Bar Foundation pursuant to (h), the lawyer may create and maintain either an interest bearing or a noninterest bearing account, provided that any interest earned by the funds belongs to the client, shall be distributed according to the client's instructions, and shall not be used by the lawyer for any purpose without the client's express consent.*

*(j) Beginning January 1, 2008 and in addition to the requirements previously set forth in this Rule, lawyers trust accounts shall be maintained only in financial institutions approved by the Office of the General Counsel. The Office shall establish rules governing approval and termination of approved status for financial institutions, and shall annually publish a list of approved financial institutions.*

*(k) A financial institution may be approved as a depository for lawyer trust accounts if it files with the Office of the General Counsel an agreement, a Trust Account Overdraft Reporting Agreement (TAORA) form provided by the Office, to report to the Office in the event any properly payable instrument is presented against a lawyer trust account containing insufficient funds, irrespective of whether or not the instrument is honored. No trust account shall be maintained in any financial institution which does not agree to make such reports. Any such agreement shall apply to all branches of the financial institution and shall not be cancelled except upon thirty (30) days notice in writing to the Office.*

*(l) The Trust Account Overdraft Reporting Agreement shall provide that all reports made by the financial institution shall be in the following format:*

*(1) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors.*

*(2) In the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the lawyer or law firm, the account number, the date of presentation for payment and the date paid, as well as the amount of overdraft created thereby.*

	<p><i>(3) Such reports shall be made simultaneously with, and within the time provided by law for notice of dishonor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within five (5) banking days of the date of presentation for payment against insufficient funds.</i></p> <p><i>(m) Every lawyer practicing or admitted to practice in this jurisdiction shall be deemed to have consented to the reporting and production requirements mandated by this rule.</i></p> <p><i>(n) Nothing herein shall preclude a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this rule.</i></p> <p><i>(o) Definitions</i></p> <p><i>"Financial Institution" – includes banks, savings and loan associations, savings banks and any other business or person which accepts for deposit funds held in trust by lawyers.</i></p> <p><i>"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 jurisdiction.</i></p> <p><i>"Notice of dishonor" – refers to the notice, which a financial institution is required to give, under the laws of this jurisdiction, upon presentation of an instrument, which the institution dishonors.</i></p>
Rule 1.16	Same as MR
Rule 1.17	<p>First sentence of Rule is the same as MR but adds after "law firm:" "(or the authorized representative of a lawyer or a law firm);" jurisdiction is Oklahoma;</p> <p>Adds to end of (b): <i>except that:</i></p> <ul style="list-style-type: none"><li><i>(1) the representation of any client who does not consent as provided in paragraph (c) shall not be transferred;</i></li><li><i>(2) matters shall not be transferred to a purchaser unless the seller has reasonable basis to believe that the purchaser has the requisite knowledge and skill to handle such matters, or reasonable assurances are obtained that such purchaser will either acquire such knowledge and skill or associate with another lawyer having such competence;</i></li><li><i>(3) matters shall not be transferred to a purchaser who would not be permitted to assume such representation by reason of restrictions contained in Rules 1.7 through 1.10 or other Rules; and</i></li><li><i>(4) where matters in litigation are involved, any necessary judicial approvals of the transfer of representation must be obtained.</i></li></ul> <p>Does not adopt MR (c); Adds (c):</p>

	<p><i>(c) The seller or the seller's representative shall give written notice to each client whose representation is proposed to be transferred, stating:</i></p> <p><i>(1) a sale of the entire practice, or the entire area of practice, is proposed;</i></p> <p><i>(2) a transfer of the representation of such client to a specified lawyer, lawyers, or law firm is contemplated;</i></p> <p><i>(3) the client has the right to take possession of the file and retain other counsel;</i></p> <p><i>(4) the existence and status of any funds or property held for the client, including but not limited to retainers or other prepayments; and</i></p> <p><i>(5) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of the date of the notice.</i></p> <p><i>The signed written consent of each client whose representation is proposed to be transferred to a purchaser must be obtained; provided that the client's consent to the transfer of the client's files shall be presumed if the client does not take any action or does not otherwise object within ninety (90) days of the date of the notice.</i></p> <p>Last sentence of (c) is similar to MR (c) but changes “may disclose” to “must disclose;”</p> <p>Adds (d):</p> <p><i>(d) 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.</i></p>
Rule 1.18	Same as MR
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	(a) Adds subparagraph:
	<i>(4) fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client.</i>
Rule 3.4	Same as MR
Rule 3.5	Same as MR
Rule 3.6	(a): Replaces clause “that the lawyer knows....matter” with “that a reasonable lawyer would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have an imminent and materially prejudicial effect on the fact-finding process in an adjudicatory proceeding relating to the matter and involving lay fact-finders or the possibility of incarceration” to end.

	<p>Deletes MR (b)  State rule (b) identical to MR (c)  State rule (c) identical to MR (d)</p>
Rule 3.7	Same as MR
Rule 3.8	<p>Does not adopt MR (g) or (h) but adds:  <i>(g) The lawyer upon whom a subpoena is served shall be afforded a reasonable time to file a motion to quash compulsory process of his/her attendance. Whenever a subpoena is issued for a lawyer who then moves to quash it by invoking attorney/client privilege, the prosecutor may not press further in any proceeding for the subpoenaed lawyer's appearance as a witness until an adversary in camera hearing has resulted in a judicial ruling which resolves all the challenges advanced in the lawyer's motion to quash.</i></p>
Rule 3.9	Same as MR
Rule 4.1	Same as MR
Rule 4.2	Same as MR
Rule 4.3	Same as MR
Rule 4.4	Same as MR
Rule 5.1	Same as MR
Rule 5.2	Same as MR
Rule 5.3	Same as MR
Rule 5.4	<p>Adds paragraph (2A) :  <i>(2A) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer;</i>  Does not adopt (a)(4) but inserts in its place:  <i>(4) [The concept of this subsection of the ABA Model Rule is addressed in the Comment.]</i></p>
Rule 5.5	<p>(c) Adds to beginning: "Subject to the provisions of 5.5(a);" changes "a United States jurisdiction" to "another United States jurisdiction;" adds "where not admitted to practice" before "that;"  (d)(1) Adds "in connection with the employer's matters, provided the employer does not render legal services to third persons" after "organizational affiliates."</p>
Rule 5.6	Same as MR
Rule 5.7	Same as MR
Rule 6.1	<p>Changes title to: <b>PRO BONO PUBLIC SERVICE;</b>  Changes language to:  <i>A lawyer should render public interest legal service.  A lawyer may discharge this responsibility by:</i>  <i>(a) providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable</i></p>

	<p><i>groups or organizations;</i>  <i>(b) serving without compensation in public interest activities that improve the law, the legal system, or the legal profession;</i>  <i>or</i>  <i>(c) financial support for organizations that provide legal services to persons of limited means.</i></p>
Rule 6.2	Same as MR
Rule 6.3	Same as MR
Rule 6.4	Changes “benefitted by” to “affected by.”
Rule 6.5	Same as MR
Rule 7.1	Same as MR
Rule 7.2	(b) Adds “directly or indirectly” after “anything of value;” (b)(4) Adds clause: “without paying anything solely for the referral.”
Rule 7.3	Same as MR
Rule 7.4	<p>Changes “Specialization” in title to “Certification;”  (a) Adds clause, “by advertisement or otherwise,” after “a lawyer may” and adds to end: “or limits his practice to or concentrates in particular fields of law;”  (b) is the same as MR (d);  (b)(1) is the same as MR (b);  (b)(2) is the same as MR (c);  (b)(3) is equivalent to MR (d)(1) but changes language to:  <i>(3) a lawyer who is certified as a specialist in a particular field of law or law practice by the Supreme Court of the State of Oklahoma may communicate that fact, but only in accordance with the rules prescribed by that Court; and</i>  Adds:  <i>(b)(4) a lawyer who is certified as a specialist in a particular field of law or law practice by the official licensing authority of another state in which the lawyer is licensed may communicate that fact, but only in accordance with all rules and requirements of such state's licensing authority, and provided that the lawyer also communicates that such certification is not recognized by the Supreme Court of the State of Oklahoma.</i></p>
Rule 7.5	Same as MR
Rule 7.6	Does not adopt
Rule 8.1	Same as MR
Rule 8.2	Same as MR
Rule 8.3	<p>(b) Replaces “who knows” with “having knowledge;”  (c) Deletes language after “Rule 1.6;”  Adds:  <i>(d) The provisions of Rule 8.3(a) shall not apply to lawyers who obtain such knowledge or evidence while acting as Ethics Counsel or as a member, investigator, agent, employee, or as a designee of the</i></p>

As of February 17, 2010

	<i>Oklahoma Bar Association Lawyers Helping Lawyers Committee, Judges Helping Judges, or the Management Assistance Program in the course of assisting another lawyer or judge. Any such knowledge or evidence received by lawyers acting in such capacity shall enjoy the same confidence as information protected by the attorney-client privilege under applicable rule and Rule 1.6.</i>
Rule 8.4	Same as MR
Rule 8.5	Same as MR

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