

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

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| | <p>New rules as adopted by the Tennessee Supreme Court to be effective 1/1/2011. Variations from the Model Rules are noted. Rules only; comment comparison not included.</p> |
| <p>Replaces “Rule(s)” with “RPC(s)” throughout the text Numbers each chapter before headings – Chapters 1-8</p> | |
| Preamble | <p>Adds [1]: <i>A lawyer is an expert in law pursuing a learned art in service to clients and in the spirit of public service and engaging in these pursuits as part of a common calling to promote justice and public good. Essential characteristics of the lawyer are knowledge of the law, skill in applying the applicable law to the factual context, thoroughness of preparation, practical and prudential wisdom, ethical conduct and integrity, and dedication to justice and the public good.</i></p> <p>TN [2-14] are equivalent to MR [1-13]</p> |
| Scope | <p>TN [15-18], [20], [23] are equivalent to MR [14-17], [19], and [21], respectively</p> <p>[19] (MR [18]) Changes after “government lawyers may” in the first sentence to “differ from those of lawyers in private client-lawyer relationships. Certain government lawyers may be authorized to represent several government agencies, officers, or employees in legal controversies in circumstances where a private lawyer could not represent multiple private clients. Government lawyers in Tennessee are also subject to the Open Meetings Act as interpreted by the Tennessee courts. Further, they may have authority to represent the “public interest” in circumstances where a private lawyer would not be authorized to do so.”</p> <p>Replaces language in last sentence with: “These Rules do not abrogate the powers and responsibilities of government lawyers as set forth under federal law or under the Constitution, statutes, or common law of Tennessee;” Adds to end: “The resolution of any conflict between these Rules and the responsibilities or authority of government lawyers under any such legal provisions is a question of law beyond the scope of these Rules;”</p> <p>[21] (MR [20]) replaces language in the last sentence after “Nevertheless” with “in some circumstances, a lawyers’ violation of a Rule may be relevant in determining whether there was a breach of the applicable standard of conduct.”</p> <p>Adds after MR [20] TN [22]: <i>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</i></p> |

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| | <p><i>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.</i></p> <p>Adds [24] to end: <i>Standard Citation Format: Citations to each Rule of Professional Conduct (“RPC”) shall be in the following format: Tenn. Sup. Ct. R. 8, RPC ____.</i></p> |
| <p>Rule 1.0</p> | <ul style="list-style-type: none"> • Replaces (d): “Fraud” or “fraudulent” denotes an intentionally false or misleading statement of material fact, an intentional omission from a statement of fact of such additional information as would be necessary to make the statements made not materially misleading, and such other conduct by a person intended to deceive a person or tribunal with respect to a material issue in a proceeding or other matter;” • (f) Replaces “actual knowledge” with “actual <i>awareness</i>;” • (g) Replaces language with: “a partner in a law firm organized as a partnership or professional limited liability partnership, a shareholder in a law firm organized as a professional corporation, a member in a law firm organized as a professional limited liability company, or a sole practitioner who employs other lawyers or nonlawyers in connection with his or her practice;” • (k) Adds “Screening” and “screened;” • (l) Adds “Substantial” or “substantially” changes language to “denotes something that is not only material but also of clear and weighty importance;” • (m) Adds after “a court “(including a special master, referee, judicial commissioner, or other similar judicial official presiding over a court proceeding);” • Adds (o) <i>“Material” or “materially denotes something that a reasonable person would consider important in assessing or determining how to act in a matter.</i> <p>[5] – intentionally omitted [10] Adds at the end: “Although this Rule does not require that the personally disqualified lawyer be prohibited from sharing in any fee generated by the representation in question, such a prohibition can be considered in determining the effectiveness of the screening procedures employed by the firm. For example, a screened lawyer is not prohibited from receiving a salary or</p> |

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| | partnership share established by prior independent agreement.” |
| Rule 1.1 | Same as MR |
| Rule 1.2 | (a) Replaces language after “shall consult with the client” in the first sentence with: “about the means by which the client’s objectives are to be accomplished. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation.” (c) Adds at the end “preferably in writing;” |
| Rule 1.3 | Same as MR |
| Rule 1.4 | Same as MR |
| Rule 1.5 | Adds (a)(9) and (10): <i>prior advertisements or statements by the lawyer with respect to the fees the lawyer charges; and</i> <i>(10) whether the fee agreement is in writing.</i> (d)(1) Deletes “in lieu thereof; or” and adds: “unless the matter relates solely to the collection of arrearages in alimony or child support or the enforcement of an order dividing the marital estate and the fee arrangement is disclosed to the court; or;” (e)(2) Deletes “including the share each lawyer will receive” Adds (f) <i>A fee that is nonrefundable in whole or in part shall be agreed to in writing, signed by the client, that explains the intent of the parties as to the nature and amount of the nonrefundable fee.</i> |
| Rule 1.6 | (a) Adds underlined words and breaks the sentence into subparagraphs (1), (2), and (3) after “unless”: <i>(1) the client gives informed consent;</i> <i>(2) the disclosure is impliedly authorizes in order to carry out the representation;</i> <i>(3) the disclosure is permitted by paragraph (b) <u>or required by paragraph (c).</u></i> (b)(1) Replaces with: “to prevent the client or another person from committing a crime, including a crime that is reasonably certain to result in substantial injury to the financial interest or property of another, unless disclosure is prohibited or restricted by RPC 3.3;” (b)(2) Deletes “crime o” before “a fraud;” Adds at the end: “unless disclosure is prohibited or restricted by RPC 3.3;” (b)(3) Deletes “a crime” after “client’s commission of”; adds at the end: “unless disclosure is prohibited or restricted by RPC 3.3;” Deletes (b)(6) Adds as (c): A lawyer shall reveal information relating to the representation of a client to the extent the lawyer reasonably believes disclosure is necessary: <i>(1) is identical to MR (b)(1)</i> <i>Adds as (2): to comply with an order of a tribunal requiring disclosure, but only if ordered to do so by the tribunal after the lawyer has asserted on behalf of the client all non-frivolous claims that the information sought by the tribunal is protected</i> |

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| | <p><i>against disclosure by the attorney-client privilege or other applicable law; or</i> <i>Adds as (3): to comply with RPC 3.3, 4.1, or other law.</i></p> |
| Rule 1.7 | <p>Adds (c) <i>A lawyer shall not represent more than one client in the same criminal case, unless</i> <i>(1) the lawyer demonstrates to the tribunal that good cause exists to believe that no conflict of interest prohibited under this Rule presently exists or is likely to exist; and</i> <i>(2) each affected client gives informed consent.</i></p> |
| Rule 1.8 | <p>(c) Adds after “gift from a client”: “to the lawyer or a person related to the lawyer.” (f) Deletes “for representing” and adds instead “or direction in connection with the representation of;” (f)(1) Replaces “gives informed consent” with “consents after consultation;” (g) Deletes language after “unless” and adds instead: <i>(1) each client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and</i> <i>(2) each client gives informed consent, in writing signed by the client. The lawyer’s disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.</i> (h)(1) Adds “or prospective client” changes language after “to a client” and deletes the rest of the sentence after “malpractice;” (h)(2) Replaces language after “former client unless” to: “the lawyer fully discloses all the terms of the agreement to the client in a manner that can reasonably be understood by the client and advises the client in writing of the desirability of seeking and gives the client a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.” (j) [Reserved]</p> |
| Rule 1.9 | <p>(b) Adds at the beginning: “Unless the former client gives informed consent, confirmed in writing,” (b)(2) Deletes the rest of the sentence starting with “unless;” (c) Deleted subparagraphs (c)(1) and (2) and changes language after “shall not thereafter” to: “reveal information relating to the representation or use such information to the disadvantage of the former client unless (1) the former client gives informed consent, confirmed in writing, or (2) these Rules would permit or require the lawyer to do so with respect to a client, or (3) the information has become generally known.”</p> |
| Rule 1.10 | <p>(a) Deletes (1) and (2). References to Rules 1.7, 1.9 or 2.2. Adds after “unless”: “the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.” Replaces (c) with: Except with respect to paragraph (d) below, if a lawyer is personally disqualified from representing a person with interests adverse to a client of a law firm with which the lawyer was formerly associated,</p> |

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| | <p>other lawyers currently associated in a firm with the personally disqualified lawyer may represent the person, notwithstanding paragraph (a) above, if both the personally disqualified lawyer and the lawyers who will represent the person on behalf of the firm act reasonably to:</p> <ol style="list-style-type: none"> (1) identify that the personally disqualified lawyer is prohibited from participating in the representation of the current client; and (2) determine that no lawyer representing the current client has acquired any information from the personally disqualified lawyer that is material to the current matter and is protected by Rule 1.9(c); (3) promptly implement screening procedures to effectively prevent the flow of information about the matter between the personally disqualified lawyer and the other lawyers in the firm; and (4) advise the former client in writing of the circumstances that warranted the implementation of the screening procedures required by this Rule and of the actions that have been taken to comply with this Rule. <p>Replaces (d) with:</p> <p>The procedures set forth in paragraph (c) may not be used to avoid imputed disqualification of the firm, if</p> <ol style="list-style-type: none"> (1) the disqualified lawyer was substantially involved in the representation of a former client; and (2) the lawyer’s representation of the former client was in connection with an adjudicative proceeding that is directly adverse to the interests of a current client of the firm; and (3) the proceeding between the firm’s current client and the lawyer’s former client is still pending at the time the lawyer changes firms. <p>TN Rules (e) is identical to MR (c) but adds “or former client” after “the affected client”</p> <p>TN Rule (f) is identical to MR (d)</p> |
| <p>Rule 1.11</p> | <p>(b) Adds after “in such a matter unless”:</p> <p><i>both the personally disqualifies lawyer and the lawyers who are representing the client in the matter act reasonably to:</i></p> <ol style="list-style-type: none"> <i>(1) ascertain that the personally disqualified lawyer is prohibited from participating in the representation of the current client; and</i> <i>(2) determine that no lawyer representing the client has acquired any material confidential government information relating to the matter; and</i> <i>(3) promptly implement screening procedures to effectively prevent the flow of information about the matter between the personally disqualified lawyer and other lawyers in the firm; and</i> <i>(4) advise the government agency in writing of the circumstances that</i> |

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| | <p><i>warranted the utilization of the screening procedures required by this Rule and the actions that have been taken to comply with this Rule.</i></p> <p>(c) Changes last sentence after “in the matter only if” to “both the personally disqualified lawyer and the lawyers who are representing the client in the matter comply with the requirements set forth in paragraph (b).”</p> <p>(d)(2)(i) Adds at the end: “or under applicable law no one is, or by lawful delegation may be, authorized to act in the lawyer’s stead in the matter; or”</p> <p>(d)(2)(ii) Adds after “a lawyer serving as”: “a staff attorney to a court or as”</p> |
| Rule 1.12 | <p>Changes name to: “Former Judge or Arbitrator”</p> <p>(a) Adds after “law clerk”: “or staff attorney.” Deletes “mediator of other third-party neutral” Replaces “mediator, or other third-party neutral” with “or a law clerk to such a person;”</p> <p>(b) In first sentence, deletes language after “as an arbitrator;” Adds before “law clerk, “staff attorney to a court or as a;” in last sentence replaces “clerk” with “lawyer” and “judge” with “court;” adds to end “or arbitrator;”</p> <p>(c) Deletes (1) and (2) and replaces language after “in the matter unless” with: <i>both the disqualified lawyer and the lawyers representing the client in the matter have complied with the requirements set forth in Rule 1.11(a)(1), (a)(2), and (b)(3) and have advised the appropriate tribunal in writing of the circumstances that warranted the utilization of the screening procedures required by this Rule and the actions that have been taken to comply with this Rule.</i></p> |
| Rule 1.13 | <p>(c) Replaced by: <i>If despite the lawyer’s efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and is likely to result in substantial injury to the organization, the lawyer may withdraw in accordance with RPC 1.16 and may make such disclosures of information relating to the organization’s representation only to the extent permitted to do so by RPCs 1.6 and 4.1.</i></p> <p>TN (d) same as MR (e) TN (e) same and MR (f) TN (f) same as MR (g) but adds references to Rule 2.2 in addition to 1.7.</p> |
| Rule 1.14 | Same as MR |
| Rule 1.15 | <p>Changes title to “Safekeeping Property and Funds”</p> <p>Adds “and funds” after “property” throughout</p> <p>(a) Deletes language after first sentence;</p> <p>(b) Replaces language with: <i>Funds belonging to clients or third persons shall be deposited in a separate account maintained in an FDIC member depository institution having a deposit-accepting office located in the state where the lawyer’s office is situated (or elsewhere with the consent of the client or third person) and which</i></p> |

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| | <p><i>participates in the required overdraft notification program as required by Supreme Court Rule 9, Section 29.1. A lawyer may deposit the lawyer's own funds in such an account for the sole purpose of paying financial institution service charges or fees on that account, but only in an amount reasonably necessary for that purpose. Other property shall be identified as such and appropriately safeguarded. Complete records of such funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.</i></p> <p><i>(1) Except as provided by subparagraph (b)(2), interest earned on accounts in which the funds of clients are deposited, less any deduction for financial institution service charges or fees (other than overdraft charges) and intangible taxes collected with respect to the deposited funds, shall belong to the clients or third persons whose funds are deposited, and the lawyer shall have no right or claim to such interest. Overdraft charges shall not be deducted from accrued interest and shall be the responsibility of the lawyer.</i></p> <p><i>(2) A lawyer shall deposit all funds of clients and third persons that are nominal in amount or expected to be held for a short period of time such that the funds cannot earn income for the benefit of the client or third persons in excess of the costs incurred to secure such income in one or more pooled accounts known as an "interest on Lawyers' Trust Account" ("IOLTA"), in accordance with the requirements of Supreme Court Rule 43. A lawyer shall not deposit funds in any account for the purpose of complying with this sub-section unless the account participates in the IOLTA program under Rule 43.</i></p> <p><i>(3) The determination of whether funds are required to be deposited in an IOLTA account pursuant to subparagraph (b)(2) rests in the sound discretion of the lawyer. No charge of ethical impropriety or other breach of professional conduct shall attend a lawyer's exercise of good faith judgment in making such a determination.</i></p> |
| Rule 1.16 | <p>(a)(4) Adds "or imprudent" after "repugnant". Deletes the rest of sentence;</p> <p>(b)(3) is similar to MR (b)(4) but adds "pursuing an objective or" before "taking action" and deletes language after "imprudent;"</p> <p>(a)(6) Replaces "in an unreasonable" by "in an unanticipated and substantial;"</p> <p>Adds (a)(8):</p> <p><i>the client gives informed consent confirmed in writing to the withdrawal of the lawyer.</i></p> <p>(d) Replaces language with:</p> <p><i>A lawyer who is discharged by a client, or withdraws from representation of a client, shall, to the extent reasonably practicable, take steps to protect the client's interests. Depending on the circumstances, protecting the client's interests may include: (1) giving reasonable notice to the client, (2) allowing time for the employment of other counsel, (3) cooperating with any successor counsel engaged by the client, (4) promptly surrendering papers and property to which the</i></p> |

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| | <p><i>client is entitled, and (5) promptly refunding any advance payment of fees that have not been earned or expenses that have not been incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.</i></p> |
| Rule 1.17 | <p>Replaces throughout “area” by “subject-area”</p> <p>(a) Chooses [in the geographic area] from the proposed MR</p> <p>(b) Adds “and the seller provides the buyer with written notice of the fee agreement with each of the seller’s clients and any other agreements relating to each client’s representation;”</p> <p>(c)(1) Adds “including the expected effective date of the proposed sale, the identity and office address of the purchaser, a brief description of the size and nature of the purchaser’s practice and its capacity to assume the representation of the client in accordance with the Rules of Professional Conduct;”</p> <p>(c)(2) Adds “and any other property or funds in the possession of the selling lawyer to which the client is entitled;”</p> <p>(c)(3) Replaces language with: “the duties of the purchasing lawyer under paragraph (d) and (e) of this Rule, and”</p> <p>Adds (c)(4):</p> <p><i>the fact that the client’s informed consent to representation by the purchaser and the transfer of the client’s files will be presumed if the client does not take any action or does not otherwise object within thirty (3) days or receipt of the notice. If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction or by the presiding judge in the judicial district in which the seller resides. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.</i></p> <p>Adds (e): “The purchasing lawyer shall abide by any other agreements between the selling lawyer and the client with respect to the representation as are permitted by these Rules.”</p> |
| Rule 1.18 | <p>(d)(2)(i) Deletes language after “any participation in the matter;”</p> <p>Adds (e)</p> <p><i>When no client-lawyer relationship ensues, a prospective client is entitled, upon request, to have the lawyer return all papers and property in the lawyer’s possession, custody, or control that were provided by the prospective client to the lawyer in connection with consideration of the prospective client’s matter.</i></p> |
| Rule 2.1 | <p>Changes heading to: CHAPTER 2 THE LAWYER AS COUNSELOR, INTERMEDIARY, AND DISPUTE RESOLUTION NEUTRAL Same as MR</p> |
| Rule 2.2 | <p><i>LAWYER SERVING AS AN INTERMEDIARY BETWEEN CLIENTS</i></p> <p>(a) <i>A lawyer represents clients as an intermediary when the lawyer provides impartial legal advice and assistance to two or more</i></p> |

clients who are engaged in a candid and non-adversarial effort to accomplish a common objective with respect to the formation, conduct, modification, or termination of a consensual legal relation between them.

(b) A lawyer shall not represent two or more clients as an intermediary in a matter unless:

(1) as between the clients, the lawyer reasonably believes that the matter can be resolved on terms compatible with the best interests of each of the clients, that each client will be able to make adequately informed decisions in the matter, that there is little risk of material prejudice to the interest of any of the clients if the contemplated resolution is unsuccessful, and that the intermediation can be undertaken impartially;

(2) the lawyer's representation of another client, responsibilities to a former client or a third person, or the lawyer's personal interests, or the representation, responsibilities, or personal interests of a lawyer associated with the lawyer in a firm will not prevent the lawyer from providing competent and diligent representation to each of the clients the lawyer will serve as an intermediary;

(3) the lawyer discusses with each client:

(i) the lawyer's responsibilities as an intermediary;

(ii) the implications of the intermediation (including the advantages and risks involved, the effect of the intermediation on the attorney-client privilege, and the effect of the intermediation on any other obligation of confidentiality the lawyer may have);

(iii) any circumstances that will materially affect the lawyer's impartiality between the clients; and

(iv) the lawyer's representation in another matter of a client whose interests are directly adverse to the interests of any one of the clients, and any responsibility of the lawyer to a former client of a third person, and any personal interest of the lawyer, or the representation, responsibilities, or personal interests of a lawyer associated with the lawyer in a firm that presents a significant risk of materially limiting the lawyer's representation of a client the lawyer will serve as an intermediary; and

(4) each client gives informed consent, confirmed in writing, to the lawyer's representation, and each client authorizes the lawyer to disclose to each of the other clients being

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| | <p><i>represented in the matter any information relating to the representation to the extent that the lawyer reasonably believes is required to comply with RPC 1.4.</i></p> <p><i>(c) While representing clients as an intermediary, the lawyer shall:</i></p> <ol style="list-style-type: none"> <i>(1) act impartially to assist the clients in accomplishing their common objective;</i> <i>(2) as between the clients, treat information relating to the intermediation as information protected by RPC 1.6 that the lawyer has been authorized by each client to disclose to the other clients to the extent the lawyer reasonably believes necessary for the lawyer to comply with RPC 1.4; and</i> <i>(3) discuss with each client the decisions to be made with respect to the intermediation and the considerations relevant in making them, so that each client can make adequately informed decisions.</i> <p><i>(d) A lawyer shall withdraw from service as an intermediary if:</i></p> <ol style="list-style-type: none"> <i>(1) any of the clients so requests;</i> <i>(2) any of the clients revokes the lawyer’s authority to disclose to the other clients any information that the lawyer would be required by RPC 1.4 to reveal to them; or</i> <i>(3) any of the other conditions stated in paragraph (b) are no longer satisfied.</i> <p><i>(e) If the lawyer’s withdrawal is required by paragraph (d)(2), the lawyer shall so advise each client of the withdrawal, but shall do so without any further disclosure or information protected by RPC 1.6.</i></p> |
| Rule 2.3 | Same as MR |
| Rule 2.4 | <p><i>Changes title to: “Lawyer as a Dispute Resolution Neutral;”</i></p> <p><i>(a) A lawyer serves as a dispute resolution neutral when the lawyer impartially assists two or more persons who are not clients of the lawyer to reach a resolution of disputes that have arisen between them. Service as a dispute resolution neutral may include service as a mediator; an arbitrator whose decision does not bind the parties; a case evaluator; a judge or juror in a mini-trial or summary jury trial as described in Supreme Court Rule 31; or in such other capacity as will enable the lawyer to impartially assist the parties resolve their dispute.</i></p> <p><i>(b) A lawyer may serve as a dispute resolution neutral in a matter if:</i></p> <ol style="list-style-type: none"> <i>(1) the lawyer is competent to handle the matter;</i> <i>(2) the lawyer can handle the matter without undue delay;</i> <i>(3) the lawyer reasonably believes he or she can be impartial as between the parties;</i> <i>(4) none of the parties to the dispute is being represented by the lawyer in other matters;</i> <i>(5) the lawyer’s responsibilities to a client, a former client, or a third person, or the lawyer’s personal interests will not prevent the lawyer from providing competent and diligent service to each of the persons the lawyer will serve as a dispute resolution neutral;</i> |

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| | <p>(6) <i>the lawyer communicates with each of the parties to the dispute, or their attorneys, about the lawyer's qualifications and experience as a dispute resolution neutral, the rules and procedures that will be followed in the proceeding, and the lawyer's responsibilities as a dispute resolution neutral, provided, however, that any party to the dispute who is represented by a lawyer may waive his or her right to all or part of the communication required by this paragraph;</i></p> <p>(7) <i>the lawyer communicates with each of the parties, or their lawyers, about any responsibility of the lawyer, or a lawyer associated with the lawyer in a firm, to a client, a former client, or third person, or a personal interest of the lawyer of a lawyer associated with the lawyer in a firm, that presents a significant risk of materially affecting the lawyer's impartiality or materially limiting the dispute resolution services the lawyer will provide t the parties;</i></p> <p>(8) <i>unless the service is pursuant to Supreme Court Rule 31, each of the parties, or their attorneys, provides informed consent, confirmed in writing, to the lawyer's service as a dispute resolution neutral in the matter; and</i></p> <p>(9) <i>when the service is pursuant to Supreme Court Rule 31, the lawyer is qualified to serve in accordance with the requirements of that Rule.</i></p> <p>(c) <i>While serving as a dispute resolution neutral, a lawyer shall:</i></p> <p>(1) <i>act reasonably to assure that the parties understand the rules and procedures that will be followed in the proceeding and the lawyer's responsibilities as a dispute resolution neutral;</i></p> <p>(2) <i>act impartially, competently, and expeditiously to assist the parties in resolving the matters in dispute;</i></p> <p>(3) <i>promote mutual respect among the parties for the dispute resolution process;</i></p> <p>(4) <i>as between the parties to the dispute and third persons, treat all information related to the dispute as if it were information protected by RPCs 1.6 and 1.8(b);</i></p> <p>(5) <i>as between the parties to the dispute, treat all information obtained in an individual caucus with a party or a party's lawyer as if it were information related to the representation of a client protected by RPCs 1.6 and 1.8(b);</i></p> <p>(6) <i>render no legal advice to any party to the dispute, but, if the lawyer believes that an unrepresented party does not understand how a proposed agreement might affect his or her legal rights or obligations, the lawyer shall advise that party to seek the advice of independent counsel;</i></p> <p>(7) <i>accept nothing of value, other than fully disclosed reasonable compensation for services rendered as the dispute resolution neutral, from a party, a party's lawyer, or any other person involved or interested in the dispute resolution process;</i></p> <p>(8) <i>not seek to coerce or unfairly influence a party to accept a proposal for resolution of a matter in dispute and shall not make any substantive</i></p> |
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| | <p><i>decisions on behalf of a party; and</i></p> <p><i>(9) when the service is pursuant to Supreme Court Rule 31, comply with all other duties of a dispute resolution neutral as set forth in that Rule.</i></p> <p><i>(d) A lawyer shall withdraw from service as a dispute resolution neutral or, if appointed by a court, shall seek the court’s permission to withdraw from service as a dispute resolution neutral, if:</i></p> <p><i>(1) any of the parties so request;</i></p> <p><i>(2) the lawyer reasonably believes that further dispute resolution services will not lead to an agreement resolving the matter in dispute or that any of the parties are unwilling or unable to cooperate with the lawyer’s dispute resolution initiatives; or</i></p> <p><i>(3) any of the conditions stated in paragraph (b) are no longer satisfied.</i></p> <p><i>(e) Upon termination of a lawyer’s service as a dispute resolution neutral, the lawyer:</i></p> <p><i>(1) may, with the consent of all the parties to the dispute and in compliance with the requirements of RPCs 1.2(c) and 2.2, draft a settlement agreement that results from the dispute resolution process, but shall not otherwise represent any or all of the parties in connection with the matter, and</i></p> <p><i>(2) shall afford each party to the dispute the protections afforded a client by RPCs 1.6, 1.8(b), and 1.9.</i></p> |
| Rule 3.1 | Adds after “an issue therein, unless”: “after reasonable inquiry the lawyer has” |
| Rule 3.2 | <i>A lawyer shall make reasonable efforts to expedite litigation.</i> |
| Rule 3.3 | <p>(a)(1) Deletes language following “tribunal; or;”</p> <p>(a)(3) Replaces with:</p> <p><i>In an ex parte proceeding, fail to inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.</i></p> <p>(b) Replaces with:</p> <p><i>A lawyer shall not offer evidence the lawyer knows to be false, except that a lawyer who represents a defendant in a criminal proceeding, and who has been denied permission to withdraw from the defendant’s representation after compliance with paragraph (f), may allow the client to testify by way of an undirected narrative or take such other action as is necessary to honor the defendant’s constitutional rights in connection with the proceeding.</i></p> <p>(c) Replaces with:</p> <p><i>A lawyer shall not affirm the validity or, or otherwise use, any evidence the lawyer knows to be false.</i></p> <p>(d) Replaces with:</p> <p><i>A lawyer may refuse to offer or use evidence, other than the testimony of a client who is a defendant in a criminal matter, that the lawyer reasonably believes is false, misleading, fraudulent or illegally</i></p> |

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| | <p><i>obtained.</i></p> <p>Adds:</p> <p><i>(e) If a lawyer knows that the lawyer’s client intends to perpetrate a fraud upon the tribunal or otherwise commit an offense against the administration of justice in connection with the proceeding, including improper conduct toward a juror or a member of the jury pool, or comes to know, prior to the conclusion of the proceeding, that the client has, during the course of the lawyer’s representation, perpetrated such a crime or fraud, the lawyer shall advise the client to refrain from, or to disclose or otherwise rectify, the crime or fraud and shall consult with the client about the consequences of the client’s failure to do so.</i></p> <p><i>(f) If a lawyer, after discussion with the client as required by paragraph (e), knows that the client still intends to perpetrate the crime or fraud, or refuses or is unable to disclose or otherwise rectify the crime or fraud, the lawyer shall seek permission of the tribunal to withdraw from the representation of the client and shall inform the tribunal, without further disclosure of information protected by RPC 1.6, that the lawyer’s request to withdraw is required by the Rules of Professional Conduct.</i></p> <p><i>(g) A lawyer who, prior to conclusion of the proceeding, comes to know that the lawyer has offered false tangible or documentary evidence shall withdraw or disaffirm such evidence without further disclosure of information protected by RPC 1.6.</i></p> <p><i>(h) A lawyer who, prior to the conclusion of the proceeding, comes to know that a person other than the client has perpetrated a fraud upon the tribunal or otherwise committed an offense against the administration of justice in connection with the proceeding, and in which the lawyer’s client was not implicated, shall promptly report the improper conduct to the tribunal, even if so doing requires the disclosure of information otherwise protected by RPC 1.6.</i></p> <p><i>(i) A lawyer who, prior to conclusion of the proceeding, comes to know of improper conduct by or toward a juror or a member of the jury pool shall report the improper conduct to the tribunal, even if so doing requires the disclosure of information otherwise protected by RPC 1.6.</i></p> <p><i>(j) If, in response to a lawyer’s request to withdraw from the representation of the client or the lawyer’s report of a perjury, fraud, or offense against the administration of justice by a person other than the lawyer’s client, a tribunal requests additional information that the lawyer can only provide by disclosing information protected by RPC 1.6 or 1.9(c), the lawyer shall comply with the request, but only if finally ordered to do so by the tribunal after the lawyer has asserted on behalf of the client all non-frivolous claims that the information sought by the tribunal is protected by the attorney-client privilege.</i></p> |
| Rule 3.4 | Adds “or” at the end of subparagraphs (a)-(e) |

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| | <p>(b) Replaces language following “assist a witness” to: “to offer false or misleading testimony; or;”</p> <p>(e) Divides into three subparagraphs: (1) “allude to...evidence;” (2) “assert personal...witness; or;” (3) “state a personal...accused; or;”</p> <p>Adds to end:</p> <p style="padding-left: 40px;"><i>(g) request or assist any person to take action that will render the person unavailable to appear as a witness by way of deposition or at trial; or</i></p> <p style="padding-left: 40px;"><i>(h) offer an inducement to a witness that is prohibited by law; or pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent on the content of his or her testimony or the outcome of the case. A lawyer may advance, guarantee, or acquiesce in the payment of:</i></p> <p style="padding-left: 40px;"><i>(1) expenses reasonably incurred by a witness in attending or testifying;</i></p> <p style="padding-left: 40px;"><i>(2) reasonable compensation to a witness for that witness’s loss of time in attending or testifying; or</i></p> <p style="padding-left: 40px;"><i>(3) a reasonable fee for the professional services of an expert witness.</i></p> |
| Rule 3.5 | <p>Adds: (d) “conduct a vexatious or harassing investigation of a juror or prospective juror; or”</p> <p>(e) same as MR (d)</p> |
| Rule 3.6 | Same as MR |
| Rule 3.7 | Same as MR |
| Rule 3.8 | <p>Moves “shall” to the beginning of (a)-(f);</p> <p>(c) is equivalent to MR but changes wording to:</p> <p style="padding-left: 40px;"><i>(c) shall not advise an unrepresented accused to waive important pretrial rights;</i></p> <p>(f) Replaces “investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case” with “employees of the prosecutor’s office;”</p> <p>Adds at the end: “and discourage investigators, law enforcement personnel, and other persons assisting or associated with the prosecutor in a criminal matter from making an extrajudicial statement that the prosecutor would be prohibited from making under RPC 3.6 or this Rule.”</p> <p>Replaces (g)(1) and (2) with:</p> <p style="padding-left: 40px;"><i>(1) if the conviction was obtained outside the prosecutor’s jurisdiction, promptly disclose that evidence to an appropriate authority, or</i></p> <p style="padding-left: 40px;"><i>(2) if the conviction was obtained in the prosecutor’s jurisdiction, undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.</i></p> <p>(h) Similar to MR but puts “was convicted” before “in the prosecutor’s jurisdiction”</p> |
| Rule 3.9 | Replaces Rule references with: “RPC 3.3(a)(1), (a)(2), (b), (c), and (d); RPC 3.4(a), (b), and (c); RPC 3.5(a), (b), and (e); and RPC 4.1.” |
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| <p>Rule 4.1</p> | <p>(a) Combines MR text and (a) ; Does not adopt MR (b) but adds : <i>(b) If, in the course of representing a client in a nonadjudicative matter, a lawyer knows that the client intends to perpetrate a crime or fraud, the lawyer shall promptly advise the client to refrain from doing so and shall discuss with the client the consequences of the client's conduct. If after such discussion, the lawyer knows that the client still intends to engage in the wrongful conduct, the lawyer shall:</i> <i>(1) withdraw from the representation of the client in the matter;</i> <i>and</i> <i>(2) give notice of the withdrawal to any person who the lawyer knows is aware of the lawyer's representation of the client in the matter and whose financial or property interests are likely to be injured by the client's criminal or fraudulent conduct. The lawyer shall also give notice to any such person of the lawyer's disaffirmance of any written statements, opinions, or other material prepared by the lawyer on behalf of the client and which the lawyer reasonably believes may be used by the client in furtherance of the crime or fraud.</i> <i>(c) If a lawyer who is representing or has represented a client in a nonadjudicative matter comes to know, prior to the conclusion of the matter, that the client has, during the course of the lawyer's representation of the client, perpetrated a crime or fraud, the lawyer shall promptly advise the client to rectify the crime or fraud and discuss with the client the consequences of the client's failure to do so. If the client refuses or is unable to rectify the crime or fraud, the lawyer shall:</i> <i>(1) if currently representing the client in the matter, withdraw from the representation and give notice of the withdrawal to any person whom the lawyer knows is aware of the lawyer's representation of the client in the matter and whose financial or property interests are likely to be injured by the client's criminal or fraudulent conduct;</i> <i>and</i> <i>(2) give notice to any such person of the lawyer's disaffirmance of any written statements, opinions, or other material prepared by the lawyer on behalf of the client and that the lawyer reasonably believes may be used by the client in furtherance of the crime or fraud.</i></p> |
| <p>Rule 4.2</p> | <p>Same as MR</p> |
| <p>Rule 4.3</p> | <p>Same as MR</p> |
| <p>Rule 4.4</p> | <p>Text is first clause of MR (a); (1) is similar to MR (a), without the first clause; Adds: <i>(2) threaten to present a criminal charge, or to offer or to agree to refrain from filing such a charge, for the purpose of obtaining an</i></p> |

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| | <p><i>advantage in a civil matter.</i></p> <p><i>(b) is similar to MR(b) but changes wording to:</i></p> <p><i>(b) A lawyer who receives information relating to the representation of the lawyer's client that the lawyer knows or reasonably should know is protected by RPC 1.6 (including information protected by the attorney-client privilege or the work-product rule) and has been disclosed to the lawyer inadvertently or by a person not authorized to disclose such information to the lawyer, shall:</i></p> <p><i>(1) immediately terminate review or use of the information;</i></p> <p><i>(2) notify the person, or the person's lawyer if communication with the person is prohibited by RPC 4.2, of the inadvertent or unauthorized disclosure; and</i></p> <p><i>(3) abide by that person's or lawyer's instructions with respect to disposition of written information or refrain from using the written information until obtaining a definitive ruling on the proper disposition from a court with appropriate jurisdiction.</i></p> |
| Rule 5.1 | Same as MR |
| Rule 5.2 | Same as MR |
| Rule 5.3 | <p>(b) Replaces "that person's" after "authority over" with "a nonlawyer", and also before "conduct"</p> <p>(c) Replaces "such a person that" with "a nonlawyer;"</p> <p>(c)(2) Replaces "the person" with "the nonlawyer" before "is employed," and inserts "nonlawyer's" before conduct;</p> |
| Rule 5.4 | <p>(a)(4) Deletes "legal fees" and replaces with "fee"; inserts "with a client represented in the matter or" before "with a non-profit organization"; same to end.</p> <p>Adds (a)(5):</p> <p><i>(5) a lawyer who is a full-time employee of a client may share a legal fee with the client to the extent necessary to reimburse the client for the actual cost to the client of permitting the lawyer to represent another client while continuing in the full-time employ of the client with whom the fee will be shared; and</i></p> <p>Adds (a)(6):</p> <p><i>(6) a lawyer may pay to a registered non-profit intermediary organization a referral fee calculated by reference to a reasonable percentage of the fee paid to the lawyer by the client referred to the lawyer by the intermediary organization.</i></p> <p>(d) Inserts "other" before "association;"</p> <p>(d)(1) Replaces "or interest" with "or ownership;"</p> |
| Rule 5.5 | <p>(c)(3) Replaces "practice" with "representation" and adds language "of an existing client" before "in a jurisdiction;" same to end;</p> <p>(c)(4) Replaces "practice" with "representation" in first clause.</p> |
| Rule 5.6 | Same as MR |
| Rule 5.7 | Same as MR |
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| Rule 6.1 | <p>Deletes “Voluntary” before “Pro Bono Publico Service”;</p> <p>Deletes first sentence “Every lawyer...”;</p> <p>(a) Equivalent to MR but changes language to: <i>(a) provide a substantial portion of such services without fee or expectation of fee to</i></p> <p>(c) is similar to last paragraph of MR Rule, but adds “to providing pro bono publico legal services” after “In addition.”</p> |
| Rule 6.2 | Same as MR |
| Rule 6.3 | Adds “However” to beginning of sentence beginning with “The lawyer.” |
| Rule 6.4 | Same as MR |
| Rule 6.5 | Same as MR |
| Rule 7.1 | Same as MR |
| Rule 7.2 | <p>(a) Changes “Rules 7.1 and 7.3” to “paragraphs (b) through (d) below and RPC 7.1, 7.3, 7.4, and 7.5;”</p> <p>Adds: <i>(b) A copy or recording of each advertisement shall be retained by the lawyer for two years after its last dissemination along with a record of when and where the advertisement appeared.</i></p> <p>(c) is similar to MR (b) but replaces “except that a lawyer may” with “except that a lawyer may pay for the following:” <i>(1) the reasonable costs of advertisements permitted by this Rule;</i> <i>(2) the usual charges of a registered intermediary organization as permitted by RPC 7.6;</i> <i>(3) a sponsorship fee or a contribution to a charitable or other non-profit organization in return for which the lawyer will be given publicity as a lawyer; or</i> <i>(4) a law practice in accordance with RPC 1.17.</i></p> <p>Adds (d): <i>Except for communications by registered intermediary organizations, any advertisement shall include the name and office address of at least one lawyer or law firm assuming responsibility for the communication.</i></p> |
| Rule 7.3 | <p>Changes name to: “Solicitation of Potential Clients”</p> <p>Replaces the word “prospective” with “potential” client throughout the text</p> <p>(b) similar to MR but adds “live” telephone before “telephone”</p> <p>(b)(2) adds “fraud” before “harassment” and adds at the end: “intimidation, overreaching, or undue influence; or”</p> <p>Adds (b)(3): <i>A significant motive for the solicitation is the lawyer’s pecuniary gain and the communication concerns an action for personal injury, worker’s compensation, wrongful death, or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a member of that person’s family, unless the accident or disaster occurred more than thirty (30) days prior to the mailing or transmission of the communication or the lawyer has a family, close personal, or prior professional relationship with the person solicited.</i></p> |

Adds:

(c) If a significant motive for the solicitation is the lawyer's pecuniary gain, a lawyer shall not send a written, recorded, or electronic communication soliciting professional employment from a specifically identified recipient who is not a person specified in paragraphs (a)(1) or (a)(2) or (a)(3), unless the communication complies with the following requirements:

(1) The words "Advertising Material" appear on the outside of the envelope, of any, in which a communication is sent and at the beginning and ending of any written, recorded or electronic communication.

(2) A lawyer shall not state or imply that a communication otherwise permitted by these rules has been approved by the Tennessee Supreme Court or the Board of Professional Responsibility.

(3) If a contract for representation is mailed with the communication, the top of each page of the contract shall be marked "SAMPLE" and the words "DO NOT SIGN" shall appear on the client signature line.

(4) Written communications shall not be in the form of or include legal pleadings or other formal legal documents.

(5) Communications delivered to potential clients shall be sent only by regular U.S. mail and not by registered, certified, or other forms of restricted delivery, or by express delivery or courier.

(6) Any communication seeking employment by a specific potential client in a specific matter shall comply with the following additional requirements:

(i) The communication shall disclose how the lawyer obtained the information prompting the communication;

(ii) The subject matter of the proposed representation shall not be disclosed on the outside of the envelope (or self-mailing brochure) in which the communication is delivered; and

(iii) The first sentence of the communication shall state, "IF YOU HAVE ALREADY HIRED OR RETAINED A LAWYER IN THIS MATTER, PLEASE DISREGARD THIS MESSAGE."

(7) A copy of each written, audio, video, or electronically transmitted communication sent to a specific recipient under this Rule shall be retained by the lawyer for two years after its last dissemination along with a record of when, and to whom, it

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| | <p><i>was sent.</i></p> <p>Replaces (d) with: <i>Unless the contents thereof include a solicitation of employment, a lawyer need not comply with the requirements of paragraph (c) above when sending announcements of an association or affiliation with another lawyer that complies with the requirements or RPC 7.5, newsletters, brochures, and other similar communications.</i></p> |
| Rule 7.4 | <p>Adds to beginning: “Subject to the requirements of RPCs 7.1, 7.2, and 7.3;”</p> <p>Replaces (b) with: <i>Except as permitted by paragraphs (c) and (d), a lawyer shall not state that the lawyer is a specialist, specializes, or is certified or recognized as a specialist in a particular field of law.</i></p> <p>(c) is the same as MR (b);</p> <p>Replaces (d) with: <i>A lawyer who has been certified as a specialist in a field of law by the Tennessee Commission on Continuing Legal Education and Specialization may state that the lawyer “is certified as a specialist in [field of law] by the Tennessee Commission on C.L.E. and Specialization.” A lawyer so certified may also state that the lawyer is certified as a specialist in that field of law by an organization recognized or accredited by the Tennessee Commission on Continuing Legal Education and Specialization as complying with its requirements, provided the statement is made in the following format: “[Lawyer] is certified as a specialist in [field of law] by [organization].”</i></p> |
| Rule 7.5 | Same as MR |
| Rule 7.6 | <p>Changes title to: “Intermediary Organizations”</p> <p>Replaces MR with:</p> <p>(a) <i>An intermediary organization is a lawyer-advertising cooperative, lawyer referral service, prepaid legal insurance provider, or a similar organization the business or activities of which include the referral of its customers, members, or beneficiaries to lawyers for the performance of fee-generating legal services or the payment for or provision of legal services to the organization’s customers, members, or beneficiaries in matters for which the organization does not bear ultimate responsibility. A tribunal appointing or assigning lawyers to represent parties before the tribunal or a government agency performing such functions on behalf of a tribunal is not an intermediary organization under this Rule.</i></p> <p>(b) <i>A lawyer shall not seek or accept a referral of a client, or compensation for representing a client, from an intermediary organization if the lawyer knows or reasonably should know that:</i></p> <p>(1) <i>the organization:</i></p> <p>(i) <i>is owned or controlled by the lawyer, a law firm with which the lawyer is associated, or a lawyer with whom the lawyer is associated in a firm; or</i></p> |

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| | <p>(ii) <i>is engaged in the unauthorized practice of law; or</i></p> <p>(iii) <i>engages in marketing activities that are false or misleading or are otherwise prohibited by the Board of Professional Responsibility; or</i></p> <p>(iv) <i>has not registered with the Board of Professional responsibility and complied with all requirements imposed by the Board; or</i></p> <p>(2) <i>the lawyer will be unable to represent the client in compliance with these Rules.</i></p> |
| Rule 8.1 | Same as MR |
| Rule 8.2 | <p>(a) Adds “that is made” between “to be false or” and “with reckless;”</p> <p>Replaces language after “integrity of” with</p> <p><i>of the following persons:</i></p> <p><i>(1) a judge;</i></p> <p><i>(2) an adjudicatory officer or public legal officer; or</i></p> <p><i>(3) a candidate for election or appointment to judicial or legal office.</i></p> |
| Rule 8.3 | <p>(a) Replaces “appropriate professional authority” with “Disciplinary Counsel of the Board of Professional Responsibility;”</p> <p>(b) Replaces “appropriate authority” with “Disciplinary Counsel of the Court of the Judiciary;”</p> <p>(c) Replaces language after “or judge while” with: “serving as a member of a lawyer assistance program approved by the Supreme Court of Tennessee or by the Board of Professional Responsibility.”</p> |
| Rule 8.4 | <p>(e) Replaces language after “ability to influence” with: “a tribunal or a governmental agency or official on grounds unrelated to the merits of, or the procedures governing, the matter under consideration;”</p> <p>Adds:</p> <p><i>(g) knowingly fail to comply with a final court order entered in a proceeding in which the lawyer is a party, unless the lawyer is unable to comply with the order or is seeking in good faith to determine the validity, scope, meaning, or application of the law upon which the order is based.</i></p> |
| Rule 8.5 | (b)(2) Deletes the last sentence. |

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