

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

Preamble	Same as ABA Model Code
Scope	<p>[18] Adds before last sentence of paragraph: “They also may have authority to represent the "public interest" in circumstances where a private lawyer would not be authorized to do so;”</p> <p>[20] Deletes “Violation of a Rule...pending litigation” and replaces with: “Whether violation of a rule gives rise to a cause of action or creates a presumption that a legal duty has been breached is a question of substantive law beyond the scope of the rules;” Replaces last sentence with: “Accordingly, nothing in the rules should be deemed to augment or diminish any substantive legal duty of lawyers or the extradisciplinary consequences of violating such a duty.”</p> <p>[21] Adds to end of paragraph: “The “Correlation Tables” in the Annotated Model Rules of Professional Conduct (5th ed. 2003 and subsequent editions), published by the Center for Professional Responsibility of the American Bar Association, provide a comparison with the previous ABA Model Code.”</p>
Rule 1.0	<p>(c) Adds “or other entity” after “sole proprietorship;”</p> <p>(m) Adds after “denotes a court:” “and all ancillary court proceedings such as depositions and hearings before a referee or master;” Adds after “neutral official,” “after the presentation of evidence or legal argument by a party or parties.”</p>
Rule 1.1	Same
Rule 1.2	Same
Rule 1.3	Same
Rule 1.4	Same
Rule 1.5	<p>(d)(1) Changes “alimony” to “spousal maintenance;” Adds at end of paragraph: “Contingent fees are not forbidden in domestic relations matters which involve the collection of:</p> <p>(i) spousal maintenance or property division due after a final judgment is entered or</p> <p>(ii) child support and maintenance supplement arrearages due after final judgment, provided that the court approves the reasonableness of the fee agreement.”</p>
Rule 1.6	<p>(a) Changes “permitted by paragraph (b)” to “required by paragraph (b) or permitted by paragraph (c);”</p> <p>(b)(1) Changes wording to: “To prevent the client or another person from committing a criminal act that the lawyer reasonably believes is likely to result in the death of, or substantial bodily harm to, a person other than the person committing the act;”</p> <p>Adds (c): “A lawyer may reveal information relating to the representation of a client thought disclosure is not required by paragraph (b), when permitted under these rules or required by another provision of law or by court order or when the lawyer reasonably believes that disclosure is necessary;”</p>

	<p>Adds (c)(1): “prevent the client from committing a crime in circumstances other than those in which disclosure is required by paragraph (b) or to prevent the client or another person from committing an act that the lawyer reasonably believes is likely to result in the death of, or substantial bodily harm to, the person committing the act;”</p> <p>Moves text of (b)(4) to (c)(2);</p> <p>Moves text of (b)(5) to (c)(3);</p> <p>Deletes (b)(6).</p>
Rule 1.7	Same
Rule 1.8	<p>(e)(1) Adds “including expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence” after “expenses of litigation;”</p> <p>(j) Deleted.</p>
Rule 1.9	Same
Rule 1.10	Same
Rule 1.11	Same
Rule 1.12	Same
Rule 1.13	<p>(b) Adds after “representation that is:” “reasonably certain to result in harm that would require a disclosure of information relating to the representation under Rule 1.6(b), or that is;” Deletes “proceed as is reasonably” through “best interest in the organization to do so;” Adds at the end of last sentence in paragraph: “unless the lawyer reasonably believes that:</p> <p>(1) a disclosure required by Rule 1.6(b) is necessary to prevent harm pursuant to that rule before a referral can be made or acted upon;</p> <p>(2) a referral is otherwise not feasible in the circumstances, considering the best interests of the organization; or</p> <p>(3) a referral is not necessary in the best interests of the organization.”</p> <p>(c) Combines (c)(1) and (c)(2) into one paragraph (c); Adds between “or a refusal to act, that” and “that is clearly” [of ABA (c)(1)]: “is reasonably certain to result in harm that would require a disclosure of information relating to the representation under Rule 1.6(b) or;” Replaces “the lawyer reasonably believes...certain to result” with “and is likely to result;”</p> <p>Adds new paragraphs (c)(1) and (c)(2):</p> <p>“(1) the lawyer reasonably believes that the action or refusal to act is reasonably certain to result in harm that would require a disclosure under Rule 1.6(b), then the lawyer must reveal the information, but only if and to the extent the lawyer reasonably believes necessary to prevent the harm; or</p> <p>(2) the lawyer reasonably believes that the action or refusal to act is a violation of law that is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 requires or permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.”</p> <p>(d) Adds at beginning of paragraph: “Except for disclosures required by Rule 1.6(b).”</p>

<p>Rule 1.14</p>	<p>(c) Replaces “paragraph (b)” with “paragraph (b) or (d);” Adds new paragraph (d): “In an emergency where the health, safety, or a financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of the person even though the person is unable to establish a client-lawyer relationship or to make or express considered judgments about the matter, provided that the following conditions exist: (1) The person or another person acting in good faith in that person’s behalf has consulted with the lawyer; (2) The lawyer reasonably believes that the person has no other lawyer, agent or other representative available The lawyer should take legal action on behalf of the person only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer acting under this paragraph has the same duties under these rules than the lawyer would have with respect to a client. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible.”</p>
<p>Rule 1.15</p>	<p>Text of ABA (a) becomes (a)(1); Replaces “in a separate account...third person” with “in accordance with Rules 1.15A and B;” Changes “five years” to “six years;” Adds (a)(2): “For purposes of these rules, property held “in connection with a representation” means funds or property of a client or third party that is in the lawyer’s possession as a result of a representation in a lawyer-client relationship or as a result of a fiduciary relationship that arises in the course of a lawyer-client relationship or as a result of a court appointment. “Fiduciary relationship” includes, but is not limited to, agent, attorney-in-fact, conservator, guardian, executor, administrator, personal representative, special administrator, or trustee;” (b) Replaces “a client trust account” with “an account in which client funds are held;” adds “bank” before “service charges;” (c) Deletes “into a client trust account;” Adds: (f) Except as provided in paragraph (g): (1) a lawyer shall not disburse funds held for a client or third person unless the funds are “collected funds.” For purposes of this rule, “collected funds” means funds that a lawyer reasonably believes have been deposited, finally settled, and credited to the lawyer’s trust account. (2) a lawyer shall not use, endanger, or encumber money held in trust for a client or third person for purposes of carrying out the business of another client or person without the permission of the owner given after full disclosure of the circumstances. (g) In the following circumstances, a lawyer may disburse trust account funds deposited for or on behalf of a client or third person in reliance on that deposit even though the deposit does not constitute collected funds if the lawyer reasonably believes that the instrument or instruments deposited will clear and will constitute collected funds in the lawyer’s</p>

	<p>trust account within a reasonable period of time:</p> <ul style="list-style-type: none">(1) When the deposit is either a certified check, cashier's check, money order, official check, treasurer's check, or other such check issued by, or drawn on, a federally insured bank, savings bank, savings and loan association, or credit union, or of any holding company or wholly owned subsidiary of any of the foregoing; or(2) When the deposit is a check drawn on the IOLTA account of an attorney licensed to practice law in the State of Vermont or on the IORTA account of a real estate broker licensed under 26 V.S.A. Chapter 41; or(3) When the deposit is a check issued by the United States of America or any agency thereof, or by the State of Vermont or any agency or political subdivision thereof; or(4) When the deposit is a personal check or checks in an aggregate amount that does not exceed \$1,000 per transaction; or(5) When the deposit is a check or draft issued by an insurance company, title insurance company, or title insurance agency, licensed to do business in Vermont. <p>(h) If an uncollected deposit in reliance upon which a lawyer has disbursed trust account funds fails, the lawyer, upon obtaining knowledge of the failure, shall immediately act to protect the funds or other property of the lawyer's other clients or third persons held by the lawyer in accordance with this rule."</p>
	<p>Adds:</p> <p style="text-align: center;">RULE 1.15A. TRUST ACCOUNTING SYSTEM</p> <p>(a) Every lawyer or law firm holding funds of clients or third persons in connection with a representation as defined in Rule 1.15(a)(2) shall hold such funds in one or more accounts in a financial institution. An account in which funds are held that are in the lawyer's possession as a result of a fiduciary relationship that arises in the course of a lawyer-client relationship or as a result of a court appointment shall be clearly identified as a "fiduciary" account. The lawyer shall take all steps necessary to inform the financial institution of the purpose and identity of all accounts maintained as required in this rule. The lawyer or law firm shall maintain an accounting system for all such accounts that shall include, at a minimum, the following features:</p> <ul style="list-style-type: none">(1) a system showing all receipts and disbursements from the account or accounts with appropriate entries identifying the source of the receipts and the nature of the disbursements;(2) a record for each client or person for whom property is held, which shall show all receipts and disbursements and carry a running account balance;(3) records documenting timely notice to each client or person of all receipts and disbursement from the account or accounts; and(4) a single source for identification of all accounts maintained as required in this rule.

	<p>(b) A lawyer or law firm shall submit to a confidential compliance review of financial records, including trust and fiduciary accounts, by the Professional Responsibility Program’s Disciplinary Counsel. The information derived from such compliance reviews shall not be disclosed by anyone in such a way as to violate the evidentiary, statutory, or constitutional privileges of a lawyer, law firm, client, or other person, or any obligation of confidentiality imposed by these rules, except in accordance with Administrative Order No. 9. A copy of any final report shall be provided to the lawyer or law firm.</p> <p>(c) The Supreme Court may at any time order an audit of financial records, including trust and fiduciary accounts of a lawyer or law firm and take such other action as it deems necessary to protect the public.</p> <p>(d) For purposes of this rule and Rule 1.15B, “financial institution” includes banks, savings and loans associations, credit unions, savings banks and any other businesses or persons that accept and hold funds held by lawyers or law firms as required in this rule.”</p>
	<p>Adds:</p> <p>RULE 1.15B. POOLED INTEREST-BEARING TRUST ACCOUNTS</p> <p>(a) (1) Every lawyer or law firm holding funds in one or more trust accounts in accordance with Rule 1.15A(a) shall create and maintain a pooled interest-bearing trust account in a financial institution in Vermont that has been approved by the Professional Responsibility Board. Funds so held that are reasonably expected to earn net interest or dividends, as defined in paragraph (2) of this subdivision, for the client or other person for whom they are held shall be deposited in that account. The interest or dividends accruing on this account, net of any transaction costs, as defined in paragraph (2) of this subdivision, shall be paid over to the Vermont Bar Foundation by the financial institution. No earnings of the account shall be made available to the lawyer or law firm. No lawyer may be disciplined for placing client funds in the pooled interest-bearing account if the lawyer made a good faith determination that the funds fit the provisions of this rule.</p> <p>(2) For purposes of this rule,</p> <p>(i) “Net interest or dividends” means the net of interest and dividends on a particular amount of one client’s or other person’s funds over the administrative costs, as defined in subparagraph (ii), allocable to that amount. In estimating the gross amount of interest or dividends to be earned on a particular amount of the funds of a client or other person, the lawyer or law firm shall consider the principal amount involved; available interest or dividend rates; and the time the funds are likely to be held, taking into account the likelihood of delay in any relevant proceeding or transaction.</p> <p>(ii) “Administrative costs” means the portion of the following costs properly allocable to a particular amount of one client’s or other person’s funds paid to a lawyer or law firm:</p> <p>(A) Financial institution service charges for opening, maintaining, or closing an account, or accounting for the</p>

	<p>deposit and withdrawal of funds and payment of interest.</p> <p>(B) Reasonable charges of the lawyer or law firm for opening, maintaining, or closing an account; accounting for the deposit and withdrawal of funds and payment of interest; and obtaining information and preparing or forwarding any returns or reports that may be required by a revenue taxing agency as to the interest and dividends earned on the funds of a client or other person.</p> <p>(iii) "Transaction costs" means the following costs incident on opening and maintaining a pooled interest-bearing trust account created in accordance with paragraph (1) of this subdivision: Financial institution charges for opening and maintaining the account, or accounting for the deposit and withdrawal of funds and payment of interest or dividends to the Vermont Bar Foundation.</p> <p>(b) A lawyer or law firm maintaining a pooled interest-bearing trust account created and maintained as required in this rule shall direct the financial institution:</p> <ul style="list-style-type: none">(1) to remit interest or dividends, as the case may be, to the Vermont Bar Foundation; and(2) to transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm for whom the remittance is sent; and(3) to transmit to the depositing lawyer or law firm at the same time a report showing the amount paid to the Foundation. <p>(c) The preponderance of the interest or dividends received by the Foundation shall be used by the Foundation to support legal services for the disadvantaged. Remaining funds may be used for public education relating to the courts and legal matters.</p> <p>(d) A financial institution shall be approved by the Professional Responsibility Board as a depository for pooled interest-bearing trust accounts created and maintained as required in this rule if it shall file with the Board an agreement, in a form provided by the Board, to report to the Board in the event any properly payable instrument is presented against such a trust account containing insufficient funds, irrespective of whether or not the instrument is honored. The Supreme Court may establish rules governing approval and termination of approved status for financial institutions, and the Board shall annually publish a list of approved financial institutions. No pooled interest-bearing trust account shall be created or maintained under this rule in any financial institution that does not agree to make such reports. Any such agreement shall apply to all branches of the financial institution and shall not be canceled except upon 30 days' notice in writing to the Board.</p> <p>(e) The overdraft notification agreement shall provide that all reports made by the financial institution shall be in the format described below. 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 banking days of the date of presentation</p>
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	<p>for payment against insufficient funds.</p> <p>(1) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and shall include a copy of the dishonored instrument, if such a copy is normally provided to depositors;</p> <p>(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> <p>(f) Every lawyer practicing or admitted to practice in Vermont shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements mandated by this rule.</p> <p>(g) 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.</p> <p>(h) "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 Vermont.</p> <p>(i) "Notice of dishonor" refers to the notice which a financial institution is required to give, under the laws of Vermont, upon presentation of an instrument which the institution dishonors.</p>
Rule 1.16	Same
Rule 1.17	Same
Rule 1.18	<p>(a) Adds clause, "in good faith," after "a person who;"</p> <p>(b) Adds after "except as:" " Rule 1.6 would require or permit or as Rule 1.9."</p>
Rule 2.1	Same
Rule 2.2	Deleted
Rule 2.3	Same
Rule 2.4	Same
Rule 3.1	Same
Rule 3.2	Same
Rule 3.3	Same
Rule 3.4	Same
Rule 3.5	<p>(c) Deletes everything after "communicate ex parte;" Adds:</p> <p>(1) with a judge or other person acting in a judicial or quasi-judicial capacity in a pending or impending adversary proceeding, unless authorized to do so by the Code of Judiciary Conduct, by other law, or by court order;</p> <p>(2) with a juror or prospective juror before the court clerk has certified that the juror's term of service is complete except by leave of court for good cause shown and under such terms as the court shall determine;</p> <p>or"</p> <p>(c) Replaces "after discharge of jury if" with: "after the court clerk has certified that the juror's term of service is complete if;"</p>

	(d) Replaces “conduct intended to disrupt a tribunal” with “undignified or discourteous conduct which is degrading or disrupting to a tribunal.”
Rule 3.6	(7)(i) Adds “and family status” after “occupation.”
Rule 3.7	Same
Rule 3.8	(d) Deletes “such as the right to a preliminary hearing;” (e) Adds “inquest” after “grand jury;” (f) Adds “who are in the employment or under the control of the prosecutor” after “prosecutor in a criminal case;” Deletes (g) through (h).
Rule 3.9	Same
Rule 4.1	Adds text of paragraph (a) to end of sentence: “In the course...shall not knowingly;” Deletes (a) and (b).
Rule 4.2	Same
Rule 4.3	Same
Rule 4.4	Same
	Adds: RULE 4.5. THREATENING CRIMINAL PROSECUTION “A lawyer shall not present, participate in presenting, or threaten to present criminal charges in order to obtain an advantage in a civil matter.”
Rule 5.1	Same
Rule 5.2	Same
Rule 5.3	Same
Rule 5.4	Same
Rule 5.5	Same
Rule 5.6	Same
Rule 5.7	Same
Rule 6.1	Changes “should aspire to render” to “should render.”
Rule 6.2	Same
Rule 6.3	Same
Rule 6.4	Same
Rule 6.5	Same
Rule 7.1	Same
Rule 7.2	(b)(2) Changes “an appropriate regulatory authority” to “any appropriate regulatory authority designated by the Supreme Court.”
Rule 7.3	Same
Rule 7.4	(d) Changes “by an organization” to “by a named organization;” Deletes “that has been approved...Bar Association; and;” Adds after “named organization:” “provided that the communication clearly states that there is no procedure in Vermont for approving certifying organizations unless the named organization has been accredited by the American Bar Association to certify lawyers as specialists in a particular field of law; and.”

As of August 28, 2009

Rule 7.5	Same
Rule 7.6	Same
Rule 8.1	Same
Rule 8.2	Same
Rule 8.3	(c) Moves “otherwise protected by Rule 1.6” to end of paragraph; Changes “an approved lawyer assistance program” to: “lawyer assistance program approved by the Vermont Bar Association or as a member of the Professional Responsibility Committee of the Vermont Bar Association.”
Rule 8.4	(c) Replaces text of paragraph with: “engage in a “serious crime,” defined as illegal conduct involving any felony or involving any lesser crime a necessary element of which involves interference with the administration of justice, false swearing, intentional misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a “serious crime;” Adds (g): “discriminate against any individual because of his or her race, color, religion, ancestry, national origin, sex, sexual orientation, place of birth or age, or against a qualified handicapped individual, in hiring, promoting or other determining the conditions of employment of that individual.”
Rule 8.5	(a) Replaces “this jurisdiction” with “Vermont” in several instances.

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