

	<p style="text-align: center;">American Bar Association CPR Policy Implementation Committee</p> <p style="text-align: center;">Variations of the ABA Model Rules of Professional Conduct</p> <p style="text-align: center;">RULE 3.8(e):</p> <p style="text-align: center;">(e) not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor reasonably believes:</p> <p style="text-align: center;">(1) the information sought is not protected from disclosure by any applicable privilege;</p> <p style="text-align: center;">(2) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and</p> <p style="text-align: center;">(3) there is no other feasible alternative to obtain the information;</p> <p>Variations from ABA Model Rule are noted. Based on reports of state committees reviewing recent changes to the model rules. For information on individual state committee reports, see http://www.abanet.org/cpr/jclr/home.html.</p> <p>Does not include Comments.</p>
<p>AL Effective 2/19/09</p>	<p>Does not have</p>
<p>AK (former rule)</p>	<p>Adds as last paragraph: and the prosecutor obtains prior judicial approval after an opportunity for an adversarial proceeding.</p>
<p>AK Effective 4/15/09</p>	<p>Same as MR</p>
<p>AZ Effective 12/1/03</p>	<p>Same as MR</p>
<p>AR Effective 5/1/05</p>	<p>Does not have</p>
<p>CA Effective 9/1/09</p>	<p>Does not have (has not adopted Model Rules)</p>
<p>CO (former rule)</p>	<p>Same as MR</p>
<p>CO Effective 1/1/08</p>	<p>Same as MR</p>
<p>CT</p>	<p>Does not have</p>

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Effective 1/1/07	
DE Effective 7/1/03	Same as MR
District of Columbia Effective 2/1/07	Does not have
FL Effective 5/22/06	Does not have
GA Effective 1/1/01	(f) is the same as MR (e)
HI Effective 1/1/94	Does not have
ID Effective 5/4/10	Same as MR
IL (former rule)	Does not have
IL Effective 1/1/2010	Same as MR
IN Effective 1/1/05	Same as MR
IA Effective 7/1/05	Same as MR
KS Effective 7/1/07	Same as MR
KY (former rule)	Does not have
KY Effective 7/15/09	(d) is the same as MR (e)
LA Effective 3/1/04	Same as MR
ME (former rule)	Does not have (has not adopted Model Rules)
ME	Does not have

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Effective 8/1/09	
MD Effective 7/1/05	Does not have
MA Effective 9/1/08	(f) is similar to MR (e) but moves “the prosecutor reasonably believes” to (f)(1); changes MR (e)(1) to (e)(1)(i), (2) to (ii), (3) to (iii); adds as (e)(2): <i>(2) the prosecutor obtains prior judicial approval after an opportunity for an adversarial proceeding; (g) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused;</i>
MI Effective 10/1/88	Does not have
MI (as proposed July 2004)	Same as MR
MN Effective 10/1/05	Does not have MR (e)(3)
MS Effective 11/3/05	Does not have
MO Effective 7/1/07	Same as MR
MT Effective 4/1/04	Same as MR
NE Effective 9/1/05	Same as MR
NV Effective 5/1/06	Same as MR
NH (former rule)	Does not have
NH Effective 1/1/08	Same as MR
NJ Effective 1/1/04	(e)(1): combines MR (e)(1) and (2) but deletes “the successful completion of”

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NM Effective 11/3/08	Same as MR
NY (former rule)	Does not have (has not adopted Model Rules)
NY Effective 4/1/09	Does not have
NC Effective 3/1/03	(e): replaces “unless the prosecutor reasonably believes” with “or participate in the application for the issuance of a search warrant to a lawyer for the seizure of information of a past or present client in connection with an investigation of someone other than the lawyer, unless”
ND Effective 8/1/06	Same as MR
OH Effective 2/1/07	(e): adds to end “all of the following apply”
OK (former rule)	Adds as final paragraph: <i>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>
OK Effective 1/1/08	Same as MR
OR Effective 12/1/06	Does not have
PA Effective 7/1/06	Does not have
RI Effective 4/15/07	(f) not, without prior judicial approval, subpoena a lawyer for the purpose of compelling the lawyer to provide evidence concerning a person who is or was represented by the lawyer when such evidence was obtained as a result of the attorney-client relationship.
SC Effective 10/1/05	Same as MR
SD Effective 1/1/04	(e): replaces “about” with “relating to the lawyer’s representation of”

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TN Effective 1/1/2011	Same as MR, begins with “shall”
TX Effective 4/6/95	Does not have
UT Effective 11/1/05	Does not have
VT (former rule)	(e): adds “inquest” after “grand jury”
VT Effective 9/1/09	Same as above
VA Effective 1/1/04	Does not have
WA Effective 9/1/06	Same as MR
WV Effective 1/1/89	Does not have
WI Effective 7/1/07	(e): deletes “criminal”
WY Effective 7/1/06	Does not have

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