

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

ARIZONA	
	<p>New rules as adopted by Arizona Supreme Court to be effective 12/1/03. Rules 1.13, 5.5 and 8.5 as amended by Arizona Supreme Court to be effective 12/1/04. Rules 1.15, 3.8, and 7.2 to be effective 1/1/14. Variations from the Model Rules are noted. Rules only; comment comparison not included.</p> <p>** Highlight indicates adoption of Ethics 20-20 Commission August 2012 and February 2013 Rule amendment(s): black-letter or Comment.</p>
Preamble	Deleted the word "zealous" or "zealously" in Preamble [2], [8] and [9]
Scope	Did not delete the second to the last sentence in [18]: "They also may have authority to represent the "public interest" in circumstances where a private lawyer would not be authorized to do so."
Rule 1.0	(c): deleted the words "authorized to practice law" after the words "or other association"; Added a sentence at the end of the definition: "Whether government lawyers should be treated as a firm depends on the particular Rule involved and the specific facts of the situation."
Amendment Effective 1/1/2015	
Rule 1.1	Identical
Rule 1.2	Identical
Rule 1.3	Identical
Rule 1.4	Added (c): "In a criminal case, a lawyer shall promptly inform a client of all proffered plea agreements."
Rule 1.5	(a)(8): "the degree of risk assumed by the lawyer." (b): writing is required, not preferable; and changes in the basis or rate of the fee or expenses must also be communicated in writing. adds (d)(3): "a fee denominated as "earned upon receipt," "nonrefundable" or in similar terms unless the client is simultaneously advised in writing that the client may nevertheless discharge the lawyer at any time and in that event may be entitled to a refund of all or part of the fee based upon the value of the representation pursuant to paragraph (a)." (e)(2): the client agrees, in a writing signed by the client, to the participation of all the lawyers involved and the division of the fees and responsibilities between the lawyers; and
*Amendment Effective 1/1/16	
Rule 1.6	(a): adds at the end reference to "paragraphs (c) or (d), or ER 3.3(a)(3)." adds as (b) A lawyer shall reveal such information to the extent the lawyer reasonably believes necessary to prevent the client from committing a criminal act that the lawyer believes is likely to result in death or substantial bodily harm. adds as (c) A lawyer may reveal the intention of the lawyer's client to commit a crime and the information necessary to prevent the crime. (d): introduction same as MR (b)
Amendment Effective 1/1/2015	

	<p>(d)(1): same as MR (b)(2) (d)(2): same as MR (b)(3) except does not include prevent (d)(3): same as MR (b)(4) (d)(4): same as MR (b)(5) (d)(5): to comply with other law or a final order of a court or tribunal of competent jurisdiction directing the lawyer to disclose such information. (e): Identical to MR (c)</p>
Rule 1.7	Same as MR, but moved (b)(4) up into introductory paragraph of (b)
Rule 1.8	<p>Adds (h)(2): make an agreement prospectively limiting the client's right to report the lawyer to appropriate professional authorities; or (h)(3): "settle such allegations, claims, or potential claims" instead of "settle a claim or potential claim for such liability" retained as (l) old MR (i), which was deleted by E2k and is now covered in 1.7: A lawyer related to another lawyer as parent, child, sibling, spouse or cohabitant shall not represent a client in a representation directly adverse to a person who the lawyer knows is represented by the other lawyer except upon consent by the client after consultation regarding the relationship. The provision in (k) relating to imputation does not apply to paragraph (l).</p>
Rule 1.9	(c) in introduction, deletes the words "or whose present or former firm has formerly represented a client"
<p>Rule 1.10 *Amendment Effective 1/1/16</p>	<p>(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by ERs 1.7 or 1.9, 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. (b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm. unless: (1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and (2) any lawyer remaining in the firm has information protected by ERs 1.6 and 1.9(c) that is material to the matter. If the only such information is contained in documents or electronically stored information maintained by the firm, and the firm adopts screening procedures that are reasonably adequate to prevent access to such documents or electronically stored information by the remaining lawyers, those remaining lawyers will not be considered to have protected information within the meaning of this Rule. (c) A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in ER 1.7. (d) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under ER 1.9 unless: (1) the personally disqualified lawyer did not have primary responsibility for the</p>

	<p>matter that causes the disqualification under Rule 1.9;</p> <p>(2) the personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom;</p> <p>(3) written notice is promptly given to any affected former client to enable it to ascertain compliance with the provisions of this Rule, including a description of the particular screening procedures adopted; when they were adopted; a statement by the personally disqualified lawyer and the new firm that the former client’s material confidential information has not been disclosed or used in violation of the Rules; and an agreement by the new firm to respond promptly to any written inquiries or objections by the former client about the screening procedure; and</p> <p>(4) the personally disqualified lawyer and the new firm reasonably believe that the steps taken to accomplish the screening of material confidential information will be effective in preventing such information from being disclosed to the new firm and its client.</p> <p>(e) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by ER 1.11.</p>
<p>Rule 1.11</p> <p>*Amendment Effective 1/1/16</p>	<p>(a) Except as law may otherwise expressly permit, a lawyer shall not represent a private client in connection with a matter in which the lawyer participated personally and substantially Arizona Supreme Court No. R-13-0046 Page 5 of 6 as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation. No lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:</p> <p>(1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and</p> <p>(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule., including a description of the particular screening procedures adopted; when they were adopted; a statement by the personally disqualified lawyer and the new firm that the agency’s material confidential information has not been disclosed or used in violation of the Rules; and an agreement by the new firm to respond promptly to any written inquiries or objections by the agency about the screening procedure; and</p> <p>(3) the personally disqualified lawyer and the new firm reasonably believe that the steps taken to accomplish the screening of material confidential information will be effective in preventing such information from being disclosed to the new firm and its client.</p>
<p>Rule 1.12</p> <p>*Amendment Effective 1/1/16</p>	<p>(c)(2): Adds after “Rule”: including a description of the particular screening procedures adopted; when they were adopted; a statement by the personally disqualified lawyer and the new firm that the parties’ and tribunal’s material confidential information has not been disclosed or used in violation of the Rules; and an agreement by the new firm to respond promptly to any written inquiries or objections by the parties or the tribunal about the screening procedure; and</p> <p>Adds (c)(3): the personally disqualified lawyer and the new firm reasonably</p>

	believe that the steps taken to accomplish the screening of material confidential information will be effective in preventing such information from being disclosed to the new firm and its client.
Rule 1.13	Identical
Rule 1.14	Identical
Rule 1.15	<p>(e): Replaces “is in possession” with “possesses”; Deletes “until the dispute is resolved” after “the property shall be kept separate by the lawyer”; Replaces “any” with “all” after “promptly distribute”; Deletes “the interests are not in dispute” and adds:</p> <p>there are no competing claims. Any other property shall be kept separate until one of the following occurs:</p> <p>(1) the parties reach an agreement on the distribution of the property;</p> <p>(2) a court order resolves the competing claims; or</p> <p>(3) distribution is allowed under section (f) below.</p> <p>(f) Where the competing claims are between a client and a third party, the lawyer may provide written notice to the third party of the lawyer’s intent to distribute the property to the client, as follows:</p> <p>(1) The notice shall be served on the third party in the manner provided under Rules 4.1 or 4.2 of the Arizona Rules of Civil Procedure, and must inform the third party that the lawyer may distribute the property to the client unless the third party initiates legal action and provides the lawyer with written notice of such action within 90 calendar days of the date of service of the lawyer’s notice.</p> <p>(2) If the lawyer does not receive such written notice from the third party within the 90-day period, and provided that the disbursement is not prohibited by law or court order, the lawyer may distribute the funds to the client after consulting with the client regarding the advantages and disadvantages of disbursement of the disputed funds and obtaining the client’s informed consent to the distribution, confirmed in writing.</p> <p>(3) If the lawyer is notified in writing of an action filed within the 90-day period, the lawyer shall continue to hold the property separate unless and until the parties reach an agreement on distribution of the property, or a court resolves the matter.</p> <p>(4) Nothing in this rule is intended to alter a third party’s substantive rights</p>
Rule 1.16	<p>(d): Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client’s interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers documents and property to which the client is entitled and refunding any</p>

	<p>advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law. <u>Upon the client's request, the lawyer shall provide the client with all of the client's documents, and all documents reflecting work performed for the client.</u> <u>The lawyer may retain documents reflecting work performed for the client to the extent permitted by other law only if retaining them would not prejudice the client's rights.</u></p>
Rule 1.17	Identical
<p>Rule 1.18 *Amendment Effective 1/1/16</p>	<p>(d) Representation is permissible if both the affected client and the prospective client have given informed consent, confirmed in writing, or:</p> <p>(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and</p> <p>(2) written notice is promptly given to the prospective client, including a description of the particular screening procedures adopted; when they were adopted; a statement by the personally disqualified lawyer and the new firm that the prospective client's material confidential information has not been disclosed or used in violation of the Rules; and an agreement by the new firm to respond promptly to any written inquiries or objections by the prospective client about the screening procedure; and</p> <p>Adds (3): the personally disqualified lawyer and the partners of the new firm reasonably believe that the steps taken to accomplish the screening of material confidential information will be effective in preventing such information from being disclosed to the new firm and its client.</p>
Rule 2.1	Identical
Rule 2.2	Identical
Rule 2.3	Identical
Rule 2.4	Identical
Rule 3.1	Adds "good faith" before "basis in law and fact"; substitutes "may include" for "includes"; and adds "nonfrivolous" before "argument for an extension"
Rule 3.2	Identical
Rule 3.3	Identical
Rule 3.4	Identical
Rule 3.5	Identical
Rule 3.6	Identical
Rule 3.7	Identical
Rule 3.8	<p>Effective January 1, 2014:</p> <p>(g) When a prosecutor knows of new, credible, and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:</p> <p>(1) promptly disclose that evidence to the court in which the defendant was convicted and to the corresponding prosecutorial authority, and to defendant's counsel or, if defendant is not represented, the defendant and the indigent defense appointing authority in the jurisdiction, and</p>

As of October 13, 2017

	<p>(2) if the judgment of conviction was entered by a court in which the prosecutor exercises prosecutorial authority, make reasonable efforts to inquire into the matter or to refer the matter to the appropriate law enforcement or prosecutorial agency for its investigation into the matter.</p> <p>(h) When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor’s jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall take appropriate steps, including giving notice to the victim, to set aside the conviction.</p> <p>(i) A prosecutor who concludes in good faith that information is not subject to subsections (g) or (h) of this Rule does not violate those subsections even if this conclusion is later determined to have been erroneous.</p> <p>* See also: Rule 3.10 that applies to all lawyers.</p>
Rule 3.9	Identical
<p>Adds Rule 3.10</p> <p>Amendment Effective 1/1/2014</p>	<p>(a) When a lawyer knows of credible and material evidence that creates a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the lawyer shall promptly disclose that evidence to the court in which the defendant was convicted and to the corresponding prosecutorial authority, and to defendant's counsel or, if defendant is not represented, the defendant and the indigent defense appointing authority in the jurisdiction.</p> <p>(b) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or other law.</p> <p>(c) A lawyer who in good faith concludes that information is not subject to this Rule does not violate this Rule even if that conclusion is later determined to have been erroneous.</p> <p>(d) This Rule does not require disclosure if the lawyer knows that appropriate governmental authorities or the convicted defendant already possess the information.</p>
Rule 4.1	Identical
Rule 4.2	Retained the term “party”; did not change to “person” did not add “or court order.”
Rule 4.3	
<p>Rule 4.4</p> <p>Amendment Effective 1/1/2015</p>	<p>Title : Respect for Rights of Others</p> <p>(a): substitutes “any other person” for “a third person”</p> <p>(b) did not add “relating to the representation of the lawyer’s client”; adds at the end: “.. and preserve the status quo for a reasonable period of time in order to permit the sender to take protective measures.”</p>
Rule 5.1	Identical

Rule 5.2	Identical
Rule 5.3	Identical
Rule 5.4	Identical
Rule 5.5 *Amendment effective 1/1/2015	<p>(b) Except as authorized by these Rules or other law, a lawyer who is not admitted to practice in Arizona shall not: (1) engage in the regular practice of Arizona law; or (2) hold out to the public or otherwise represent that the lawyer is admitted to practice Arizona law.</p> <p>(d) A lawyer admitted in another United States jurisdiction, or a lawyer admitted in a jurisdiction outside the United States, not disbarred or suspended from practice in any jurisdiction may provide legal services in Arizona that exclusively involve federal law, the law of another jurisdiction, or tribal law.</p> <p>(e) A lawyer admitted in another United States jurisdiction, or a lawyer admitted in a jurisdiction outside the United States, not disbarred or suspended from practice in any jurisdiction, and registered pursuant to Rule 38(a) of these rules, may provide legal services in Arizona that are provided to the lawyer's employer or its organizational affiliates and are not services for which pro hac vice admission is required.</p> <p>Adds (f): Any attorney who engages in the authorized multijurisdictional practice of law in Arizona under this rule must advise the lawyer's client that the lawyer is not admitted to practice in Arizona, and must obtain the client's informed consent to such representation.</p> <p>Adds (g): Attorneys not admitted to practice in Arizona, who are admitted to practice law in any other jurisdiction in the United States and who appear in any court of record or before any administrative hearing officer in the State of Arizona, must also comply with Rules of the Supreme Court of Arizona governing pro hac vice admission. See Rule 39.</p> <p>Adds (h): Any attorney who engages in the multijurisdictional practice of law in Arizona, whether authorized in accordance with these Rules or not, shall be subject to the Rules of Professional Conduct and the Rules of the Supreme Court regarding attorney discipline in Arizona.</p>
Rule 5.6	(b): kept language of old MR
Rule 5.7	<p>This rule is new to AZ and is slightly different from the new MR:</p> <p>(a) "A lawyer may provide, to clients and to others, law-related services, as defined in paragraph (b), either: (1) by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients; or (2) by a separate entity which is controlled by the lawyer individually or with others.</p>

	<p>Where the law-related services are provided by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients, the lawyer shall be subject to the provisions of the Rules of Professional Conduct in the course of providing such services. In circumstances in which law-related services are provided by a separate entity controlled by the lawyer individually or with others, the lawyer shall not be subject to the Rules of Professional Conduct, in the course of providing such services, only if the lawyer takes reasonable measures to assure that a person obtaining the law-related services knows that the services of the separate entity are not legal services and that the protections of the client-lawyer relationship do not apply.</p> <p>(b): same as MR</p>
Rule 6.1	<p>(a) A lawyer should voluntarily render public interest legal service. A lawyer may discharge this responsibility by rendering a minimum of fifty hours of service per calendar year by one or a combination of the following activities:</p> <ul style="list-style-type: none">(1) Providing professional services at no fee or at a substantially reduced fee to the poor or near poor or to organizations that have as a principal purpose promoting the interests of the poor or near poor, or to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights; or(2) Providing services at no fee or at a substantially reduced fee in connection with law-related education sponsored by the Arizona Bar Foundation or activities for improving the law, the legal system or the legal profession; or(3) Providing professional or other law-related services at no fee or at a substantially reduced fee to charitable groups or organizations.(4) When pro bono publico service is done at a substantially reduced fee, the fee shall be agreed to in writing at the inception of the representation and refer to this Rule. <p>(b) A lawyer who works less than full-time may discharge this responsibility by adjusting downward the fifty hour standard by an appropriate percentage. A lawyer who renders substantially more than fifty hours of service in one year may carry over excessive hours to subsequent years in satisfaction of the standard.</p> <p>(c) A law firm or other group of lawyers may satisfy their responsibility under this Rule, if they desire, collectively. For example, the designation of one or more lawyers to work on pro bono publico matters may be attributed to other lawyers within the firm or group who support the representation. Other forms of collective activity, if approved by the State Bar, may also satisfy the responsibility.</p> <p>(d) The efforts of individual lawyers are not enough to meet the needs of the poor. The profession and government have instituted programs to provide direct delivery of legal services to the poor. The direct support of such programs is an alternative expression of support to provide law in the public interest, and a lawyer is encouraged to provide financial support for organizations that provide legal services to persons of limited means or to the Arizona Bar Foundation for the direct delivery of legal services to the poor.</p>

Rule 6.2	Identical
Rule 6.3	Identical
Rule 6.4	Identical
Rule 6.5	Identical
Rule 7.1	Adds “or knowingly permit to be made on the lawyer’s behalf” after “A lawyer shall not make”
Rule 7.2	<p>Does not include new (b)(4)</p> <p>(c): deletes “office address of” and replaces with “contact information for”</p> <p>adds as (d): (d) Every advertisement (including advertisement by written solicitation) that contains information about the lawyer’s fees shall be subject to the following requirements:</p> <p>(1) advertisements and written solicitations indicating that the charging of a fee is contingent on outcome or that the fee will be a percentage of the recovery shall disclose (A) that the client will be liable for expenses regardless of outcome unless the repayment of such is contingent upon the outcome of the matter and (B) whether the percentage fee will be computed before expenses are deducted from the recovery;</p> <p>(2) range of fees or hourly rates for services may be communicated provided that the client is informed in writing at the commencement of any client-lawyer relationship that the total fee within the range which will be charged or the total hours to be devoted will vary depending upon that particular matter to be handled for each client and the client is entitled without obligation to an estimate of the fee within the range likely to be charged;</p> <p>(3) fixed fees for specific routine legal services, the description of which would not be misunderstood or be deceptive, may be communicated provided that the client is informed in writing at the commencement of any client-lawyer relationship that the quoted fee will be available only to clients whose matters fall within the services described and that the client is entitled without obligation to a specific estimate of the fee likely to be charged;</p> <p>(4) a lawyer who advertises a specific fee, range of fees or hourly rate for a particular service shall honor the advertised fee, or range of fees, for at least ninety (90) days unless the advertisement specifies a shorter period; provided, for advertisements in the yellow pages of telephone directories or other media not published more frequently than annually, the advertised fee or range of fees shall be honored for no less than one year following publication.</p> <p>adds as (e): Advertisements on the electronic media may contain the same information as permitted in advertisements in the print media. If a law firm advertises on electronic media and a person appears purporting to be a lawyer, such person shall in fact be a lawyer employed full-time at the advertising law firm. If a law firm advertises a particular legal service on electronic media, and a lawyer appears as the person purporting to render the service, the lawyer appearing shall be the lawyer who will actually perform the service advertised unless the advertisement discloses that the service may be performed by other lawyers in the firm.</p>

	adds as (f); Communications required by paragraphs (c) and (d) shall be clear and conspicuous. To be “clear and conspicuous” a communication must be of such size, color, contrast, location, duration, cadence, and audibility that an ordinary person can readily notice, read, hear, and understand it.
Rule 7.3 Amendment Effective 1/1/2015	(a): deletes the word “significant” (b): also provides that a lawyer shall not “knowingly permit solicitation on the lawyer’s behalf” adds as (b)(3): the solicitation relates to a personal injury or wrongful death and is made within thirty (30) days of such occurrence. (c): adds after “known,” “or believed likely”; adds after “Advertising Material,” “in twice the font size of the body of the communication” adds as part of (c): (1) at the time of dissemination of such written communication, a written copy shall be forwarded to the Clerk of the Arizona Supreme Court and the State Bar of Arizona at its Phoenix office; (2) written communications mailed to prospective clients shall be sent only by regular U.S. mail, not by registered mail or other forms of restricted delivery; (3) if a contract for representation is mailed with the written communication, the contract shall be marked “sample” in red ink and shall contain the words “do not sign” on the client signature line; (4) the lawyer initiating the communication shall bear the burden of proof regarding the truthfulness of all facts contained in the communication, and shall, upon request of the State Bar or the recipient of the communication, disclose: (A) how the identity and specific legal need of the potential recipient were discovered; and (B) how the identity and knowledge of the specific need of the potential recipient were verified by the soliciting lawyer.
Rule 7.4	Introduction is slightly different from old MR introduction: “A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer shall not state or imply that the lawyer is a specialist except as follows:” (a) and (b) are essentially the same as MR (b) and (c). (c) replaces MR (d) and reads: (c) certified by the Arizona Board of Legal Specialization or by a national entity that has standards for certification substantially the same as those established by the board may state the area or areas of specialization in which the lawyer is certified. Prior to stating that the lawyer is a specialist certified by a national entity, the entity must be recognized by the board as having standards for certification substantially the same as those established by the board. If the national entity has not been recognized by the board, it may make application for recognition by completing an application form provided by the board.
Rule 7.5 Effective 1/1/13	Identical.
Rule 7.6	Did not adopt rule 7.6
Rule 8.1	Identical

As of October 13, 2017

Rule 8.2	Identical
Rule 8.3	(a): adds at the end: “except as otherwise provided in these Rules or by law.” (c): second half similar to old MR: “. . .while serving as a member of an approved lawyers assistance program to the extent that such information would be confidential if it related to the representation of a client.”
Rule 8.4	Identical
Rule 8.5	Title is “Jurisdiction”

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