### Comparison of Newly Adopted Delaware Rules of Professional Conduct with ABA Model Rules

<table>
<thead>
<tr>
<th>Rule</th>
<th>Delaware</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Preamble</strong></td>
<td>Identical</td>
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<td><strong>Scope</strong></td>
<td>[20]: Did not add last sentence: &quot;Nevertheless, since the Rules do establish standards of conduct by lawyers, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct.&quot;</td>
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<td>Rule 1.0</td>
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<td>Rule 1.4</td>
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<td>Rule 1.5</td>
<td>Division of Fee deletes (e)(1) 1.5(e)(2) keeps the old wording of the provision but adds &quot;in writing&quot;: &quot;the client is advised in writing of and does not object to the participation of all the lawyers involved.&quot; Does not require disclosure of the share each lawyer is to receive. (f): retains DE existing rule on advance fees: &quot;A lawyer may require the client to pay some or all of the fee in advance of the lawyer undertaking the representation, provided that: (1) The lawyer shall provide the client with a written statement that the fee is refundable if it is not earned, (2) The written statement shall state the basis under which the fees shall be considered to have been earned, whether in whole or in part, and (3) All unearned fees shall be retained in the lawyer's trust account, with statement of the fees earned provided to the client at the time such funds are withdrawn from the trust account.&quot;</td>
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<td>Rule 1.6</td>
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<td>Rule 1.9</td>
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<td>Rule 1.10</td>
<td>(a): adds at the beginning: &quot;Except as otherwise provided in this rule, ..... adds new (c) to provide for screening - identical to E2k's proposal: (c) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a client in a matter in which that lawyer is disqualified under Rule 1.9 unless: (1) the personally disqualified lawyer is timely screened form any participation in the matter and is apportioned no part of the fee therefrom; and (2) written notice is promptly given to the affected former client.&quot;</td>
<td><strong>Highlight</strong> indicates adoption of Ethics 20-20 Commission August 2012 and February 2013 Rule amendment(s): black-letter or Comment.</td>
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MR (c) and (d) renumbered to (d) and (e).

Rule 1.11  Identical

Rule 1.12  Identical

Rule 1.13  Adopted Ethics 2000 version of 1.13

Rule 1.14  Identical

Rule 1.15  kept DE version of 1.15 which includes detailed provisions regarding financial recordkeeping. did not add new text or comment changes to the rule. [there is also a new 1.15A on overdraft notification]

Rule 1.15: Safekeeping Property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account designated solely for funds held in connection with the practice of law in this jurisdiction. Such funds shall be maintained in the state in which the lawyer’s office is situated, or elsewhere with the consent of the client or third person. Funds of the lawyer that are reasonably sufficient to pay bank charges may be deposited therein; however, such amount may not exceed $2000 and must be separately stated and accounted for in the same manner as clients' funds deposited therein. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after the completion of the events that they record.

(b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(c) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

(d) A lawyer engaged in the private practice of law must maintain financial books and records on a current basis, and shall preserve the books and records for at least five years following the completion of the year to which they relate, or, as to fiduciary books and records, five years following the completion of that fiduciary obligation. The maintenance of books and records must conform with the following provisions:

(1) All bank statements, cancelled checks (or images and/or copies thereof as
As of January 27, 2015

provided by the bank), records of electronic transfers, and duplicate deposit slips relating to fiduciary and non-fiduciary accounts must be preserved. Records of all electronic transfers from fiduciary accounts shall include the name of the person authorizing transfer, the date of transfer, the name of recipient and confirmation from the banking institution confirming the number of the fiduciary account from which the funds are withdrawn and the date and time the request for transfer was completed.

(2) Bank accounts maintained for fiduciary funds must be specifically designated as “Rule 1.15A Attorney Trust Account” or “1.15A Trust Account” or “Rule 1.15A Attorney Escrow Account” or “1.15A Escrow Account,” and must be used only for funds held in a fiduciary capacity. A designation of the account as a “Rule 1.15A Attorney Trust Account” or “1.15A Trust Account” or “Rule 1.15A Attorney Escrow Account” or “1.15A Escrow Account,” must appear in the account title on the bank statement. Other related statements, checks, deposit slips, and other documents maintained for fiduciary funds, must contain, at a minimum, a designation of the account as “Attorney Trust Account” or “Attorney Escrow Account.”

(3) Bank accounts and related statements, checks, deposit slips, and other documents maintained for non-fiduciary funds must be specifically designated as "Attorney Business Account" or "Attorney Operating Account," and must be used only for funds held in a non-fiduciary capacity. A lawyer in the private practice of law shall maintain a nonfiduciary account for general operating purposes, and the account shall be separate from any of the lawyer's personal or other accounts.

(4) All records relating to property other than cash received by a lawyer in a fiduciary capacity shall be maintained and preserved. The records must describe with specificity the identity and location of such property.

(5) All billing records reflecting fees charged and other billings to clients or other parties must be maintained and preserved.

(6) Cash receipts and cash disbursement journals must be maintained and preserved for each bank account for the purpose of recording fiduciary and non-fiduciary transactions. A lawyer using a manual system for such purposes must total and balance the transaction columns on a monthly basis. Page 13 Del. Prof. Cond. R. 1.16

(7) A monthly reconciliation for each bank account, matching totals from the cash receipts and cash disbursement journals with the ending check register balance, must be performed. The reconciliation procedures, however, shall not be required for lawyers using a computer accounting system or a general ledger.

(8) The check register balance for each bank account must be reconciled monthly to the bank statement balance.
(9) With respect to all fiduciary accounts:

(A) A subsidiary ledger must be maintained and preserved with a separate account for each client or third party in which cash receipts and cash disbursement transactions and monthly balances are recorded.

(B) Monthly listings of client or third party balances must be prepared showing the name and balance of each client or third party, and the total of all balances.

(C) No funds disbursed for a client or third party must be in excess of funds received from that client or third party. If, however, through error funds disbursed for a client or third party exceed funds received from that client or third party, the lawyer shall transfer funds from the non-fiduciary account in a timely manner to cover the excess disbursement.

(D) The reconciled total cash balance must agree with the total of the client or third party balance listing. There shall be no unidentified client or third party funds. The bank reconciliation for a fiduciary account is not complete unless there is agreement with the total of client or third party accounts.

(E) If a check has been issued in an attempt to disburse funds, but remains outstanding (that is, the check has not cleared the trust or escrow bank account) six months or more from the date it was issued, a lawyer shall promptly take steps to contact the payee to determine the reason the check was not deposited by the payee, and shall issue a replacement check, as necessary and appropriate. With regard to abandoned or unclaimed trust funds, a lawyer shall comply with requirements of Supreme Court Rule 73.

(F) No funds of the lawyer shall be placed in or left in the account except as provided in Rule 1.15(a).

(G) No funds which should have been disbursed shall remain in the account, including, but not limited to, earned legal fees, which must be transferred to the lawyer’s non-fiduciary account on a prompt and timely basis when earned.

(H) When a separate real estate bank account is maintained for settlement transactions, and when client or third party funds are received but not yet disbursed, a listing must be prepared on a monthly basis showing the name of the client or third party, the balance due to each client or third party, and the total of all such balances. The total must agree with the reconciled cash balance.

(10) If a lawyer maintains financial books and records using a computer system, the lawyer must cause to be printed each month a hard copy of all monthly journals, ledgers, reports, and reconciliations, and/or cause to be created each month an electronic backup of these documents to be stored in such a manner as to
make them accessible for review by the lawyer and/or the auditor for the Lawyers’ Fund for Client Protection.

(e) A lawyer's financial books and records must be subject to examination by the auditor for the Lawyers' Fund for Client Protection, for the purpose of verifying the accuracy of a certificate of compliance filed each year by the lawyer pursuant to Supreme Court Rule 69. The examination must be conducted so as to preserve, insofar as is consistent with these Rules, the confidential nature of the lawyer's books and records. If the lawyer's books and records are not located in Delaware, the lawyer may have the option either to produce the books and records at the lawyer's office in Delaware or to produce the books and records at the location outside of Delaware where they are ordinarily located. If the production occurs outside of Delaware, the lawyer shall pay any additional expenses incurred by the auditor for the purposes of an examination.

(f) A lawyer holding client funds must initially and reasonably determine whether the funds should or should not be placed in an interest-bearing depository account for the benefit of the client. In making such a determination, the lawyer must consider the financial interests of the client, the costs of establishing and maintaining the account, any tax reporting procedures or requirements, the nature of the transaction involved, the likelihood of delay in the relevant proceedings, whether the funds are of a nominal amount, and whether the funds are expected to be held by the lawyer for a short period of time. A lawyer must at reasonable intervals consider whether changed circumstances would warrant a different determination with respect to the deposit of client funds. Except as provided in these Rules, interest earned on client funds placed into an interest-bearing depository account for the benefit of the client (less any deductions for service charges or other fees of the depository institution) shall belong to the client whose funds are deposited, and the lawyer shall have no right or claim to such interest.

(g) A lawyer holding client funds who has reasonably determined, pursuant to subsection (f) of this Rule, that such funds need not be deposited into an interest-bearing depository account for the benefit of the client must maintain a pooled interest-bearing depository account for the deposit of the funds; provided, however, that this requirement shall not apply to a lawyer who either has obtained inactive status pursuant to Supreme Court Rule 69(d), or has obtained a Certificate of Retirement pursuant to Supreme Court Rule 69(f), or has formally elected to opt out of this requirement in accordance with the procedure set forth below in subparagraph (k).

(h) A lawyer who maintains such a pooled account shall comply with the following: (1) The account shall include only client's funds which are nominal amount or are expected to be held for a short period of time. (2) No interest from such an account shall be made available to a lawyer or law firm. (3) Lawyers or law firms depositing client funds in a pooled interest-bearing account under this
paragraph (h) [(g)] shall direct the depository institution: (a) To remit interest, net any service charges or fees, as computed in accordance with the institution's standard accounting practice, at least quarterly, to the Delaware Bar Foundation; and (b) To transmit with each remittance to the Delaware Bar Foundation a statement showing the name of the lawyer or law firm on whose accounting remittance is sent and the rate of interest applied; with a copy of statement to be transmitted to the lawyer or law firm by the Delaware Bar Foundation.

(i) The funds transmitted to the Delaware Bar Foundation shall be available for distribution for the following purposes: (1) To improve the administration of justice; (2) To provide and to enhance the delivery of legal services to the poor; (3) To support law related education; (4) For each other purposes that serve the public interest. The Delaware Bar Foundation shall recommend for the approval of the Supreme Court of the State of Delaware, such distributions as it may deem appropriate. Distributions shall be made only upon the Court's approval.

(j) Lawyers or law firms, depositing client funds in a pooled interest-bearing depository account under this paragraph shall not be required to advise the client of such deposit or of the purposes to which the interest accumulated by reason of such deposits is to be directed.

(k) The procedure available for opting out of the requirement to maintain pooled interest-bearing accounts are as follows: (1) Prior to December 15, 1983, a lawyer wishing to decline to maintain a pooled interest-bearing account[s] described in this paragraph for any calendar year may do so by submitting a Notice of Declination in writing to the Clerk of the Supreme Court ab initio or before December 15 of the preceding calendar year. Any such submission shall remain effective, unless revoked and need not be renewed for any ensuing year. (2) Any lawyer who has not filed a Notice of Declination on or before December 15, 1983, may elect not to maintain a pooled interest-bearing depository account for client funds as required and instead to maintain a pooled depository account for such funds that does not bear interest or that bears interest solely for the benefit of the clients who deposited the funds by certifying that the lawyer or law firm opts out of the obligation to comply with the requirements by timely submission of the Annual Registration Statement required by Supreme Court Rule 69(b)(i). Any such certification shall release the lawyer or law firm submitting it from participation effective as of the date that the certification is submitted and it shall remain effective until revoked as set forth below without need for renewal for any ensuing year. Page 15 Del. Prof. Cond. R. 1.16 (3) Notwithstanding the foregoing provisions of this subparagraph, any lawyer or law firm may petition the Court at any time and, for good cause shown, may be granted leave to opt out of the obligation to comply with the mandatory requirements of this paragraph.

(l) An election to opt out of the obligation to comply with paragraph (h) hereof may be revoked at any time upon the opening by a non-participating lawyer or law firm of a pooled interest-bearing account as previously described and due
notification thereof to the Court Administrator of the Supreme Court pursuant to Supreme Court Rule 69(g).

(m) A lawyer shall not disburse fiduciary funds from a bank account unless the funds deposited in the lawyer’s fiduciary account to be disbursed, or the funds which are in the lawyer’s unrestricted possession and control and are or will be timely deposited, are good funds as hereinafter defined. "Good funds" shall mean:

(1) cash;

(2) electronic fund ("wire") transfer;

(3) certified check;

(4) bank cashier's check or treasurer's check;

(5) U.S. Treasury or State of Delaware Treasury check;

(6) Check drawn on a separate trust or escrow account of an attorney engaged in the private practice of law in the State of Delaware held in a fiduciary capacity, including his or her client's funds;

(7) Check of an insurance company that is authorized by the Insurance Commissioner of Delaware to transact insurance business in Delaware;

(8) Check in an amount no greater than $ 10,000.00;

(9) Check greater than $ 10,000.00, which has been actually and finally collected and may be drawn against under federal or state banking regulations then in effect;

(10) Check drawn on an escrow account of a real estate broker licensed by the state of Delaware up to the limit of guarantee provided per transaction by statute.

RULE 1.15A TRUST ACCOUNT OVERDRAFT NOTIFICATION

(a) Attorney accounts designated as “Trust Account” or “Escrow Account” pursuant to Rule 1.15(d)(2) shall be maintained only in financial institutions approved by the Lawyers’ Fund for Client Protection (the “Fund”). A financial institution may not be approved as a depository for attorney trust and escrow accounts unless it shall have filed with the Fund an agreement, in a form provided by the Fund, to report to the Office of Disciplinary Counsel (“ODC”) in the event any instrument in properly payable form is presented against an attorney trust or escrow account containing insufficient funds, irrespective of whether or not the instrument is honored.

(b) The Supreme Court may establish rules governing approval and termination of approved status for financial institutions and the Fund shall annually publish a list of approved financial institutions. No trust or escrow account shall be maintained
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 thirty (30) days notice in writing to the Fund.

(c) The overdraft notification agreement shall provide that all reports made by the financial institution shall be in the following format:

(1) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and the financial institution shall provide a copy of the dishonored instrument to the ODC no later than seven (7) calendar days following a request for the copy by the ODC.

(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 attorney or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of the overdraft created thereby.

(d) Reports shall be made simultaneously with, and within the time provided by law, notice of dishonor. If an instrument presented against insufficient funds is honored, then the report shall be made within seven (7) calendar days of the date of presentation for payment against insufficient funds.

(e) Every attorney practicing or admitted to practice in this jurisdiction shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements mandated by this rule.

(f) Nothing herein shall preclude a financial institution from charging a particular attorney or law firm for the reasonable costs of producing the reports and records required by this rule.

(g) The terms used in this section are defined as follows:

(1) “Financial institution” includes banks, savings and loan associations, credit unions, savings banks, and any other business or persons who accept for deposit funds held in trust by attorneys.

(2) “Properly payable” refers to an instrument that, if presented in the normal course of business, is in a form requiring payment under the laws of Delaware.

(3) “Notice of dishonor” refers to the notice that a financial institution is required to give, under the laws of Delaware, upon presentation of an instrument that the institution dishonors.
As of January 27, 2015

| Rule 3.2 | Identical |
| Rule 3.3 | Identical |
| Rule 3.4 | Identical |
| Rule 3.5 | (b): adds after “communicate,” “or cause another to communicate”; adds after “person,” “or members of such person’s family”  
     (c): replaces “if” and the three subparts with: “unless the communication is permitted by court rule”  
     (d): adds at the end: “or engage in undignified or discourteous conduct that is degrading to a tribunal.” |
| Rule 3.6 | Identical |
| Rule 3.7 | Identical |
| Rule 3.8 | Does not adopt (g) and (h), but has a limited “innocence” provision (d)(2), cited below.  
     Adds (d):  
     (2) when the prosecutor comes to know of new, credible and material evidence establishing that a convicted defendant did not commit the offense for which the defendant was convicted, the prosecutor shall, unless a court authorizes delay, make timely disclosure of that evidence to the convicted defendant and any appropriate court, or, where the conviction was obtained outside the prosecutor's jurisdiction, to the chief prosecutor of the jurisdiction where the conviction occurred; |
| Rule 3.9 | Identical |
| Rule 4.1 | Identical |
| Rule 4.2 | Identical |
| Rule 4.3 | Identical |
| Rule 4.4 | Identical |
| Rule 5.1 | Identical |
| Rule 5.2 | Identical |
| Rule 5.3 | Identical |
| Rule 5.4 | Identical |
| Rule 5.5 | as amended 10/16/07 and 1/7/08  
     (c) and (d) adds “or in a foreign jurisdiction” after “United States jurisdiction”  
     (d)(1) adds “after compliance with Supreme Court Rule 55.1(a)(1)” after “affiliates” |
| Rule 5.6 | Identical |
| Rule 5.7 | Identical |
| Rule 6.1 | have a different formulation of the pro bono rule. decided not to add minimum aspirational standard of 50 hours.  
     A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations,
by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.

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<tr>
<td>Rule 6.2</td>
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**Rule 7.1** Identical

**Rule 7.2** add at the beginning of (b): “Except as permitted by Rule 1.5(e),”
did not add (b)(4)

**Rule 7.3** Identical

**Rule 7.4** Identical

**Rule 7.5** Identical

**Rule 7.6** Identical

**Rule 8.1** Identical

**Rule 8.2** Identical

**Rule 8.3** do not include the 2nd half of (c) but have a separate (d) regarding lawyer who participate in lawyer assistance programs, ethics committees, fee dispute and mediation programs: the relationship between those persons and a lawyer or a judge shall be the same as that of attorney and client.

**Rule 8.4** include an Interpretive Guideline regarding a lawyer's income taxes

**Rule 8.5** Identical

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