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

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| Scope     | [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;”  
[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.”  
[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.” |

| Rule 1.0   | (c) Adds “or other entity” after “sole proprietorship;”  
Amend.     | (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.”  
Effective   | Adds (o) “Advance,” “advance payment of fees,” or “retainer” means a payment by a client in anticipation of the future rendition of services that is not earned until such services are rendered and that is to be credited toward the fees earned when such future services are rendered.  
5/9/16      | Adds (p) “Nonrefundable fee” means a fee paid to an attorney and earned by the attorney before professional services are rendered. Such a nonrefundable fee may be in exchange for retaining the attorney’s availability alone or may be in exchange also for the right to receive specified services in the future for no additional fee, or for a stated fee. |

| Rule 1.1   | Same |
| Rule 1.2   | Same |
| Rule 1.3   | Same |
| Rule 1.4   | Same |
| Rule 1.5   | (d)(1) Changes “alimony” to “spousal maintenance;” Adds at end of paragraph: |
| Amend. Effective 5/9/16 | “Contingent fees are not forbidden in domestic relations matters which involve the collection of: (i) spousal maintenance or property division due after a final judgment is entered or (ii) child support and maintenance supplement arrearages due after final judgment, provided that the court approves the reasonableness of the fee agreement.”

Adds (f): A lawyer may enter into an agreement for a client to pay a nonrefundable fee that is earned before any legal services are rendered. The amount of such an earned fee must be reasonable, like any fee, in light of all relevant circumstances. A lawyer cannot accept a nonrefundable fee, or characterize a fee as nonrefundable, unless the lawyer complies with the following conditions:

(1) The lawyer confirms to the client in writing before or within a reasonable time after commencing representation (i) that the funds will not be refundable, and (ii) the scope of availability and/or services the client is entitled to receive in exchange for the nonrefundable fee.

(2) A lawyer shall not solicit or make any agreement with a client that prospectively waives the client’s right to challenge the reasonableness of a nonrefundable fee, except that a lawyer can enter into an agreement with a client that resolves an existing dispute over the reasonableness of a nonrefundable fee, if the client is separately represented or if the lawyer advises the client in writing of the desirability of seeking independent counsel and the client is given a reasonable opportunity to seek such independent counsel.

(3) Where it accurately reflects the terms of the parties’ agreement, and where such an arrangement is reasonable under all of the relevant circumstances and otherwise complies with this rule, a fee agreement may describe a fee as “nonrefundable,” “earned on receipt,” a “guaranteed minimum,” “payable in guaranteed installments,” or other similar description indicating that the funds will be deemed earned regardless of whether the client terminates the representation.

Adds (g) A nonrefundable fee that complies with the requirements of (f)(1)–(2) above constitutes property of the lawyer that should not be commingled with client funds in the lawyer’s trust account. Any funds received in advance of rendering services that do not meet the requirements of (f)(1)–(3) constitute an advance that must be deposited in the lawyer’s trust account in accordance with Rule 1.15(c) until such funds are earned by rendering services.

Rule 1.6 (a): changes end to “required by paragraph (b) or permitted by paragraph (c)” (b): replaces “may” with “must” and adds “when required by other provisions of these rules or” before “client”

(1) to prevent the client or another person from committing an act that is criminal or tortious, or otherwise in violation of law, and that the lawyer reasonably believes is likely to result in the death of, or substantial bodily harm to, a person other than the client or other person committing the act;
A lawyer may reveal information relating to the representation of a client, though 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:

* (c)(1) prevent the client from committing a crime in circumstances other than those in which disclosure is required by paragraph (b) or from committing an act that the lawyer reasonably believes is likely to result in the death of, or substantial bodily harm to, the client or another person;

* (c)(2): same as MR (b)(4)

* (c)(3): same as MR (b)(5)

MR (b)(6) is included in VT 1.6 (a)

### Rule 1.7
Same

### Rule 1.8
(e)(1) Adds “including expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence” after “expenses of litigation;”

(j) Deleted.

### Rule 1.9
Same

### Rule 1.10
Same

### Rule 1.11
Same

### Rule 1.12
Same

### Rule 1.13
(a) 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:

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;

2. a referral is otherwise not feasible in the circumstances, considering the best interests of the organization; or

3. a referral is not necessary in the best interests of the organization.”

(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;”

Adds new paragraphs (c)(1) and (c)(2):

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

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.”
(d) Adds at beginning of paragraph: “Except for disclosures required by Rule 1.6(b).”

**Rule 1.14**
(b) 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.”

**Rule 1.15**
Amend.
Effective 5/9/16
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;”; adds “reasonably” before “necessary”
(c) Adds to beginning of sentence “Unless a lawyer has entered into a nonrefundable fee agreement that complies with Rule 1.5(f);” 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 
trust account within a reasonable period of time:

(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.

(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.”

Amend. 
Effective 5/9/16

Adds:

**RULE 1.15A. TRUST ACCOUNTING SYSTEM**

(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 or, in 
appropriate circumstances, a pooled interest-bearing account pursuant to 
Rule 1.15B. An account in which funds are held that are in the lawyer’s 
possession as a result of a representation in a lawyer-client relationship or a 
fiduciary relationship shall be clearly identified as “trust” account or shall 
be identified as a fiduciary account, such as an estate, trust, or escrow 
account, to distinguish such funds from the lawyer’s own funds. 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:

(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) records documenting timely reconciliation of all accounts maintained as required by this rule and a single source for identification of all accounts maintained as required in this rule. “Timely reconciliation” means, at a minimum, monthly reconciliation of such accounts.

(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.

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.

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.”

 Adds:

**RULE 1.15B. POOLED INTEREST-BEARING TRUST ACCOUNTS**

(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.

(2) For purposes of this rule,

(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.

(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:

(A) Financial institution service charges for opening, maintaining, or closing an account, or accounting for the deposit and withdrawal of funds and payment of interest.

(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.

(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.

(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:

(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.

(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.
(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.
(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 for payment against insufficient funds.

(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;
(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.
(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.
(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.
(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.

(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.

| Rule 1.16 | Same |
| Rule 1.17 | Same |
| Rule 1.18 | (a) Adds clause, “in good faith,” after “a person who;”  
(b) Adds after “except as:” ““Rule 1.6 would require or permit or as Rule 1.9.”” |
| 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 | (c) Deletes everything after “communicate ex parte;” Adds:  
(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;  
(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; or”  
(c) Replaces “after discharge of jury if” with: “after the court clerk has certified that the juror’s term of service is complete if;”  
(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 |
| RULE 4.5. THREATENING CRIMINAL PROSECUTION | Adds:  
“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.” |
| Rule 7.5 | Same |
| Rule 7.6 | Same |
| Rule 8.1 | Same |
| Rule 8.2 | Same |
| Rule 8.3 | (c) Adds “Bar Counsel in responding to an inquiry or by” after “gained by” 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.” |
| Amend. Effective 5/9/16 |
| 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;”” (g): Adds “that the lawyer knows or reasonably should know” after “conduct”; adds “color, national origin, ancestry, place of birth” to protected categories; deletes “in conduct related to the practice of law” and replaces with “or other grounds that are illegal or prohibited under federal or state law.” |
| Amendement effective 9/18/17 |
| Rule 8.5 | (a) Replaces “this jurisdiction” with “Vermont” in several instances. |

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