

Last reviewed and edited September 28, 2023
Including amendments effective September 28, 2023

MAINE RULES OF PROFESSIONAL CONDUCT

The Maine Supreme Judicial Court adopted the Maine Rules of Professional Conduct, effective August 1, 2009. On the same date Maine Bar Rule 2-A (Aspirational Goals for Lawyer Professionalism), Maine Bar Rule 3 (Code of Professional Responsibility) and Maine Bar Rule 8 (Contingent Fees) were abrogated, as they are replaced by the Maine Rules of Professional Conduct.

Table of Contents

<i>Preamble from the Maine Task Force on Ethics</i>	1
<i>RULE 1.0 DEFINITIONS AND TERMINOLOGY</i>	5
CLIENT-LAWYER RELATIONSHIP	7
<i>RULE 1.1 COMPETENCE</i>	7
<i>RULE 1.2 SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER</i>	7
LIMITED REPRESENTATION AGREEMENT	9
<i>RULE 1.3 DILIGENCE</i>	11
<i>RULE 1.4 COMMUNICATION</i>	11
<i>RULE 1.5 FEES</i>	11
CONTINGENT FEE AGREEMENT	14
<i>RULE 1.6 CONFIDENTIALITY OF INFORMATION</i>	3
<i>RULE 1.7 CONFLICT-OF-INTEREST: CURRENT CLIENTS</i>	4
<i>RULE 1.8 CONFLICT-OF-INTEREST: CURRENT CLIENTS: SPECIFIC RULES</i>	5
<i>RULE 1.9 DUTIES TO FORMER CLIENTS</i>	7
<i>RULE 1.10 IMPUTATION OF CONFLICTS-OF-INTEREST: GENERAL RULE</i>	8
<i>RULE 1.11 SPECIAL CONFLICTS-OF-INTEREST OF FORMER AND GOVERNMENT OFFICERS AND EMPLOYEES</i>	<i>CURRENT</i> 10
<i>RULE 1.12 FORMER JUDGE, ARBITRATOR, MEDIATOR OR OTHER THIRD-PARTY NEUTRAL</i>	12
<i>RULE 1.13 ORGANIZATION AS CLIENT</i>	13
<i>RULE 1.14 CLIENT WITH DIMINISHED CAPACITY</i>	15
<i>RULE 1.15 SAFEKEEPING PROPERTY, CLIENT TRUST ACCOUNTS INTEREST ON TRUST ACCOUNTS</i>	16
<i>RULE 1.16 DECLINING OR TERMINATING REPRESENTATION</i>	19

<i>RULE 1.17</i>	<i>SALE OF LAW PRACTICE</i>	21
<i>RULE 1.18</i>	<i>DUTIES TO PROSPECTIVE CLIENT</i>	22
COUNSELOR		23
<i>RULE 2.1</i>	<i>ADVISOR</i>	23
<i>RULE 2.2</i>	<i>[RESERVED IN THE MODEL RULES]</i>	23
<i>RULE 2.3</i>	<i>EVALUATION FOR USE BY THIRD PERSONS</i>	23
<i>RULE 2.4</i>	<i>LAWYER SERVING AS THIRD-PARTY NEUTRAL</i>	24
ADVOCATE		25
<i>RULE 3.1</i>	<i>MERITORIOUS CLAIMS AND CONTENTIONS</i>	25
<i>RULE 3.2</i>	<i>EXPEDITING LITIGATION</i>	26
<i>RULE 3.3</i>	<i>CANDOR TOWARD THE TRIBUNAL</i>	26
<i>RULE 3.4</i>	<i>FAIRNESS TO OPPOSING PARTY AND COUNSEL</i>	27
<i>RULE 3.5</i>	<i>IMPARTIALITY AND DECORUM OF THE TRIBUNAL</i>	28
<i>RULE 3.6</i>	<i>TRIAL PUBLICITY</i>	29
<i>RULE 3.7</i>	<i>LAWYER AS WITNESS</i>	29
<i>RULE 3.8</i>	<i>SPECIAL RESPONSIBILITIES OF A PROSECUTOR</i>	29
<i>RULE 3.9</i>	<i>ADVOCATE IN NONADJUDICATIVE PROCEEDINGS</i>	30
TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS		30
<i>RULE 4.1</i>	<i>TRUTHFULNESS IN STATEMENTS TO OTHERS</i>	30
<i>RULE 4.2</i>	<i>COMMUNICATION WITH PERSON REPRESENTED BY COUNSEL AND LIMITED REPRESENTATIONS</i>	31
<i>RULE 4.3</i>	<i>DEALING WITH UNREPRESENTED PERSON</i>	31
<i>RULE 4.4</i>	<i>RESPECT FOR RIGHTS OF THIRD PERSONS;INADVERTENT DISCLOSURES</i>	32
LAW FIRMS AND ASSOCIATIONS		33
<i>RULE 5.1</i>	<i>RESPONSIBILITIES OF PARTNERS, MANAGERS, AND SUPERVISORS</i>	33
<i>RULE 5.2</i>	<i>RESPONSIBILITIES OF A SUBORDINATE LAWYER</i>	33
<i>RULE 5.3</i>	<i>RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS</i>	34
<i>RULE 5.4</i>	<i>PROFESSIONAL INDEPENDENCE OF A LAWYER</i>	34
<i>RULE 5.5</i>	<i>UNAUTHORIZED PRACTICE OF LAW;MULTIJURISDICTIONAL PRACTICE OF LAW</i>	36
<i>RULE 5.6</i>	<i>RESTRICTIONS ON THE RIGHT TO PRACTICE</i>	37
<i>RULE 5.7</i>	<i>RESPONSIBILITIES REGARDING LAW-RELATED SERVICES</i>	38
PUBLIC SERVICE		38
<i>RULE 6.1</i>	<i>VOLUNTARY PRO BONO PUBLICO SERVICE</i>	38
<i>RULE 6.2</i>	<i>ACCEPTING APPOINTMENTS</i>	39
<i>RULE 6.3</i>	<i>MEMBERSHIP IN LEGAL SERVICES ORGANIZATION</i>	39
<i>RULE 6.4</i>	<i>LAW REFORM ACTIVITIES AFFECTING CLIENT INTEREST</i>	40

<i>RULE 6.5</i>	<i>NONPROFIT AND COURT-ANNEXED LIMITED LEGAL SERVICES AND PROGRAMS</i>	40
INFORMATION ABOUT LEGAL SERVICES		41
<i>RULE 7.1</i>	<i>COMMUNICATIONS CONCERNING A LAWYER'S SERVICES</i>	41
<i>RULE 7.2</i>	<i>ADVERTISING</i>	41
<i>RULE 7.2-A</i>	<i>ASPIRATIONAL GOALS FOR LAWYER ADVERTISING</i>	42
<i>RULE 7.3</i>	<i>DIRECT CONTACT WITH PROSPECTIVE CLIENTS</i>	43
<i>RULE 7.4</i>	<i>COMMUNICATION OF FIELD OF PRACTICE AND SPECIALIZATION</i>	44
<i>RULE 7.5</i>	<i>FIRM NAMES AND LETTERHEADS</i>	45
<i>RULE 7.6</i>	<i>POLITICAL CONTRIBUTIONS TO OBTAIN LEGAL</i>	45
<i>RULE 8.1</i>	<i>BAR ADMISSION AND DISCIPLINARY MATTERS</i>	46
<i>RULE 8.2</i>	<i>JUDICIAL AND LEGAL OFFICIALS</i>	46
<i>RULE 8.3</i>	<i>REPORTING PROFESSIONAL MISCONDUCT</i>	46
<i>RULE 8.4</i>	<i>MISCONDUCT</i>	47
<i>RULE 8.5</i>	<i>DISCIPLINARY AUTHORITY; CHOICE OF LAW</i>	49

MAINE RULES OF PROFESSIONAL CONDUCT

Preamble from the Maine Task Force on Ethics

[1] The Maine Supreme Judicial Court adopted these rules of professional responsibility to coordinate with the American Bar Association's review of the Model Rules of Professional Conduct in 2000 and 2002. Maine's acceptance of these rules maximizes conformity with those states embracing the ABA Model Rules and also preserves the integrity of the manner in which Maine lawyers practice law. The ABA Model Rules and the Maine Bar Rules involve the same core conduct. These rules follow the numbering system used in the ABA Model Rules and in states ratifying the ABA rules, and as much as possible, follow the language of the applicable ABA rules.

[1A] These Maine Rules of Professional Conduct are the product of Task Force study and recommendations, public comment and, as to the Rules themselves, review by the Maine Supreme Judicial Court. The Maine Supreme Judicial Court adopts these rules as edited and published here. The Preamble, Scope, Comments and Reporter's Notes have not been specifically adopted by the Maine Supreme Judicial Court. The Preamble, Scope, Comments and Reporter's Notes are published with the Rules for background information and illustration.

[2] In some instances language found in the former Maine Bar rules is imported into a particular provision. In other instances additional regulatory principles are introduced into a rule. Some rules do not follow the ABA rules, for example Rule 1.6 Confidentiality of Information. Therefore, it is critically important that the user of these Maine Rules of Professional Conduct understand that the Maine Rules of Professional Conduct are not identical to the ABA Model Rules.

[2A] The Maine Task Force was instructed to preserve the structure of the ABA Model Rules (which include Comments) when possible. If provisions of the ABA Model Rules were not incorporated into these Maine Rules of Professional Conduct, those sections appear as "[Reserved]" sections or Comments. Otherwise, topical and substantive provisions of these Maine

Rules of Professional Conduct appear in the same numbered Rule and Comment as the ABA Model Rules.

- [3] [Reserved]
- [4] [Reserved]
- [5] [Reserved]
- [6] [Reserved]
- [7] [Reserved]

[7A] In addition to the Maine Rules of Professional Conduct the Maine Supreme Judicial Court has promulgated two aspirational goals for lawyers. One addresses *pro bono publico* service. The second addresses the substance and style of lawyer advertising. These aspirational goals were found at Maine Bar Rule 2-A and 2-B, and are now found in Rule 6.1 (*Pro bono* service) and Rule 7.2-A (lawyer advertising) of these Rules.

- [8] [Reserved]
- [9] [Reserved]
- [10] [Reserved]
- [11] [Reserved]
- [12] [Reserved]
- [13] [Reserved]

[14A] The Maine Supreme Judicial Court has not adopted the Preamble, Comments or Reporter's Notes. The Comments and Notes are published with the rules to provide background information and illustration.

[14B] The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may," are permissive and define areas under the Rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other Rules define the nature of relationships between the lawyer and others. The Rules are partly obligatory and disciplinary and partly constitutive and descriptive where they define a lawyer's professional role. Many of the Comments use the term "should." Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the

Rules. The Reporter's Notes are designed to elucidate and provide historical context for the recommendations of the Maine Task Force on Ethics.

[15] The Rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers and substantive and procedural law in general. The Comments are to alert lawyers to their responsibilities under such other law.

[16] Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law.

[17] Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of confidentiality under Rule 1.6, that attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. See Rule 1.18. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

[18] Under various legal systems, including constitutional, statutory and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily resides in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects generally is vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in legal controversies in circumstances where a private

lawyer could not represent multiple private clients. These Rules do not abrogate any such authority.

[19] Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations.

[20] Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. 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.

[21] The Comment and Reporter's Notes accompanying each Rule explain and illustrate the meaning and purpose of the Rule. The Preamble provides general orientation. The Comments and Reporter's Notes are intended as guides to interpretation. However, only the text of each Rule is authoritative to govern attorney conduct.

RULE 1.0 *DEFINITIONS AND TERMINOLOGY*

As used in these Rules, the following terms shall have the following meanings:

- (a) “Belief” or “believes” means the person involved actually supposed the fact in question to be true. A person’s belief may be inferred from circumstances.
- (b) “Confirmed in writing,” referring to the informed consent of a person means informed consent given in writing by the person or a writing a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for the definition of “informed consent.” If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.
- (c) “Firm” or “law firm” means a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; lawyers employed by the government to represent the government or a governmental entity; or lawyers in a legal services organization or the legal department of a corporation or other organization.
- (d) “Fraud” or “fraudulent” means conduct fraudulent under the substantive or procedural law of the applicable jurisdiction and for the purpose to deceive.
- (e) “Informed consent” means a person’s agreement to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct. Whether a client has given informed consent to representation shall be determined in light of the mental capacity of the client to give consent, the explanation of the advantages and risks involved provided by the lawyer seeking consent, the circumstances under which the explanation was provided and the consent obtained, the experience of the client in legal matters generally, and any other

circumstances bearing on whether the client has made a reasoned and deliberate choice.

- (f) “Knowingly,” “known,” or “knows” means actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.
- (g) “Partner” means a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.
- (h) “Reasonable” or “reasonably” when referring to a lawyer’s conduct means the conduct of a reasonably prudent and competent lawyer.
- (i) “Reasonable belief” or “reasonably believes” when referring to a lawyer means the lawyer believes the matter in question and the circumstances are such that the belief is reasonable.
- (j) “Reasonably should know” when referring to a lawyer means a lawyer of reasonable prudence and competence would ascertain the matter in question.
- (k) “Screened” means the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm reasonably adequate under the circumstances to protect information the isolated lawyer is obligated to protect under these Rules or other law.
- (l) “Substantial” when referring to degree or extent means a material matter of clear and weighty importance.
- (m) “Tribunal” means a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party’s interests in a particular matter.

- (n) “Writing” or “written” means a tangible or electronic record of a communication or representation, including, but not limited to, handwriting, typewriting, printing, Photostatting, photography, audio or video recording and e-mail. A “signed” writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.
- (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.
- (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.

CLIENT-LAWYER RELATIONSHIP

RULE 1.1 *COMPETENCE*

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

RULE 1.2 *SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER*

- (a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client’s decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the

representation. Subject to the Rules with respect to Declining or Terminating Representation (Rule 1.16), a lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

- (b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.
- (c) A lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client provides informed consent after consultation. If, after consultation, the client consents, an attorney may enter a limited appearance on behalf of an otherwise unrepresented party involved in a court proceeding. A lawyer who signs a complaint, counterclaim, cross-claim or any amendment thereto that is filed with the court, may not thereafter limit representation as provided in this rule, without leave of court.
- (d) A lawyer, who under the auspices of a non-profit organization or a court-annexed program provides limited representation to a client without expectation of either the lawyer or the client that the lawyer will provide continuing representation in the matter, is subject to the requirements of Rules 1.7, 1.9, 1.10 and 1.11 only if the lawyer is aware that the representation of the client involves a conflict-of-interest.
- (e) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

LIMITED REPRESENTATION AGREEMENT

(Used in conjunction with Rule 1.2 the following form shall be sufficient to satisfy the rule. The authorization of this form shall not prevent the use of other forms consistent with this rule.)

To Be Executed in Duplicate

Date: _____, 20__

1. The client, _____, retains the attorney, _____, to perform limited legal services in the following matter: v. _____
2. The client seeks the following services from the attorney (indicate by writing "yes" or "no"):
 - a. _____ Legal advice: office visits, telephone calls, fax, mail, e-mail;
 - b. _____ Advice about availability of alternative means to resolving the dispute, including mediation and arbitration;
 - c. _____ Evaluation of client self-diagnosis of the case and advising client about legal rights and responsibilities;
 - d. _____ Guidance and procedural information for filing or serving documents;
 - e. _____ Review pleadings and other documents prepared by client;
 - f. _____ Suggest documents to be prepared;
 - g. _____ Draft pleadings, motions, and other documents;
 - h. _____ Factual investigation: contacting witnesses, public record searches, in-depth interview of client;
 - i. _____ Assistance with computer support programs;
 - j. _____ Legal research and analysis;
 - k. _____ Evaluate settlement options;
 - l. _____ Discovery: interrogatories, depositions, requests for document production;
 - m. _____ Planning for negotiations;
 - n. _____ Planning for court appearances;
 - o. _____ standby telephone assistance during negotiations or settlement conferences;
 - p. _____ Referring client to expert witnesses, special masters, or other counsel;
 - q. _____ Counseling client about an appeal;
 - r. _____ Procedural assistance with an appeal and assisting with substantive legal argument in an appeal;
 - s. _____ Provide preventive planning and/or schedule legal check-ups;
 - t. _____ Other:

3. The client shall pay the attorney for those limited services as follows:

- a. Hourly Fee:

The current hourly fee charged by the attorney or the attorney's law firm for services under this agreement are as follows:

- i. Attorney:
- ii. Associate:
- iii. Paralegal:
- iv. Law Clerk:

Unless a different fee arrangement is established in clause b.) of this paragraph, the hourly fee shall be payable at the time of the service. Time will be charged in increments of one-tenth of an hour, rounded off for each particular activity to the nearest one-tenth of an hour.

b. Payment from Deposit:

For a continuing consulting role, client will pay to attorney a deposit of \$_____, to be received by attorney on or before _____, and to be applied against attorney fees and costs incurred by client. This amount will be deposited by attorney in attorney trust account. Client authorizes attorney to withdraw funds from the trust account to pay attorney fees and costs as they are incurred by client. The deposit is refundable. If, at the termination of services under this agreement, the total amount incurred by client for attorney fees and costs is less than the amount of the deposit, the difference will be refunded to client. Any balance due shall be paid within thirty days of the termination of services.

c. Costs:

Client shall pay attorney out-of-pocket costs incurred in connection with this agreement, including long distance telephone and fax costs, photocopy expense and postage. All costs payable to third parties in connection with client case, including filing fees, investigation fees, deposition fees, and the like shall be paid directly by client. Attorney shall not advance costs to third parties on client behalf.

4. The client understands that the attorney will exercise his or her best judgment while performing the limited legal services set out above, but also recognizes:
 - a. the attorney is not promising any particular outcome.
 - b. the attorney has not made any independent investigation of the facts and is relying entirely on the client limited disclosure of the facts given the duration of the limited services provided, and
 - c. the attorney has no further obligation to the client after completing the above described limited legal services unless and until both attorney and client enter into another written representation agreement.
5. If any dispute between client and attorney arises under this agreement concerning the payment of fees, the client and attorney shall submit the dispute for fee arbitration in accordance with Rule 9(e)-(k) of the Maine Bar Rules. This arbitration shall be binding upon both parties to this agreement.

WE HAVE EACH READ THE ABOVE AGREEMENT BEFORE SIGNING IT.

Signature of client

Signature of attorney

RULE 1.3 DILIGENCE

A lawyer shall act with reasonable diligence and promptness in representing a client.

RULE 1.4 COMMUNICATION

- (a) A lawyer shall:
- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
 - (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
 - (3) keep the client reasonably informed about the status of the matter;
 - (4) promptly comply with reasonable requests for information; and
 - (5) consult with the client about any relevant limitations set forth in the Maine Rules of Professional Conduct, or other law with respect to lawyers' conduct, when the lawyer knows that the client expects assistance not permitted by the Maine Rules of Professional Conduct or other law.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

RULE 1.5 FEES

- (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. A fee or charge for expenses is unreasonable when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee or expense is in excess of a reasonable fee or

expense. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
 - (2) the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;
 - (3) the range of fees customarily charged in the locality for similar legal services;
 - (4) the responsibility assumed, the amount involved and the results obtained;
 - (5) the time limitations imposed by the client or by the circumstances;
 - (6) the nature and length of the professional relationship with the client;
 - (7) the experience, reputation, and ability of the lawyer or lawyers performing the services;
 - (8) whether the fee is fixed or contingent;
 - (9) whether the client has given informed consent as to the fee arrangement;
 - (10) whether the fee agreement is in writing; and
 - (11) any other risks allocated by the fee agreement or potential benefits of the fee agreement, judged as of the time the fee agreement was made.
- (b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same

basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

- (c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination. A general form of Contingent Fee Agreement is attached to the comments to this rule.
- (d) A lawyer shall not enter into an arrangement for, charge, or collect:
 - (1) a contingent fee in any initial action for divorce, annulment, judicial separation, paternity or parentage, parental rights and responsibilities, emancipation, grandparent visitation, guardianship, or child support, or in any post-judgment proceeding to modify, alter, or amend an order arising from these actions; or
 - (2) a contingent fee for representing a defendant in a criminal case; or
 - (3) any fee to administer an estate in probate, the amount of which is based on a percentage of the value of the estate.
- (e) A lawyer shall not divide a fee for legal services with another lawyer who is not a partner in or associate of the lawyer's law firm or office unless:

- (1) after full disclosure, the client consents to the employment of the other lawyer and to the terms for the division of the fees, confirmed in writing; and
 - (2) the total fee of the lawyers does not exceed reasonable compensation for all legal services they rendered to the client.
- (f) A lawyer may accept payment by credit card for legal services previously rendered, or for an advance payment of fees or nonrefundable fee otherwise permitted by these rules.
- (g) A lawyer practicing in this State shall submit, upon the request of the client, the resolution of any fee dispute in accordance with the Supreme Judicial Court's rules governing fee arbitration.
- (h) 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 (a) that the funds will not be refundable and (b) 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," or other similar description indicating that the funds will be deemed earned regardless whether the client terminates the representation.
- (i) A nonrefundable fee that complies with the requirements of (h)(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 (h)(1)-(3) constitute an advance that must be deposited in the lawyer's trust account in accordance with Rule 1.15(b)(1) until such funds are earned by rendering services.
- (j) For definitions of "advance," "retainer," and "nonrefundable fee" as used in this Rule, see the definitions in Rule 1.0.

CONTINGENT FEE AGREEMENT

To Be Executed In Duplicate

Date _____, 20_____

The client, _____
(Name) (Street & Number) (City or Town)
retains the attorney _____
(Name) (Street & Number)

(City or Town)

to perform the legal services mentioned in par. (1) below. The attorney agrees to perform them faithfully and with due diligence.

(1) The claim, controversy, and other matters with reference to which the services are to be performed are:

(2) The contingency upon which compensation is to be paid is:

(3) The client is not to be liable to pay compensation otherwise than from amounts collected for the client by the attorney, except as follows:

(4) Reasonable compensation on the foregoing contingency is to be paid by the client to the attorney, but such compensation (including that of any associated counsel) to be paid by the client shall not exceed the following maximum percentages of the gross (net) (indicate which) amount collected. Here insert the maximum percentages to be charged in the event of collection. These may be on a flat basis or in a descending scale in relation to amount collected.)

(5) The client is to be liable to the attorney for the attorney's reasonable expenses and disbursements as hereinafter specified.

A. Litigation costs. Costs of the action, including:

- 1. Filing fees paid to the clerk of courts;
- 2. Fees for service of process and other documents;
- 3. Attendance fees and travel costs paid to witnesses;
- 4. Expert witness fees and expenses;
- 5. Costs of medical reports;
- 6. Costs of visual aids; and
- 7. Costs of taking depositions.

B. Travel expenses. Expenses for travel by the attorney on behalf of the client.

C. Telephone. Disbursements for long-distance telephone calls made by the attorney on behalf of the client.

D. Postage. Postage paid by the attorney for mailings on behalf of the client; and

E. Copying. Costs of photocopying and facsimile telecopying done by the attorney on behalf of the client.

F. Other: (Specify). (The client agrees that fees paid pursuant to this agreement will be divided. Attorney _____ will receive _____ (dollars or percent of the contingent fee) and Attorney _____ will receive _____ (dollars or percent of the contingent fee).)

(6) This agreement and its performance are subject to Rule 1.5 of the Maine Rules of Professional Conduct.

WE HAVE EACH READ THE ABOVE AGREEMENT BEFORE SIGNING IT.

Witnesses to signatures

To client: _____

Signature of Client

To attorney: _____

Signature of Attorney

(If more space is needed, separate sheets may be attached and initialed.)

RULE 1.6 *CONFIDENTIALITY OF INFORMATION*

- (a) A lawyer shall not reveal a confidence or secret of a client unless,
 - (i) the client gives informed consent; (ii) the lawyer reasonably believes that disclosure is authorized in order to carry out the representation; or (iii) the disclosure is permitted by paragraph (b).

- (b) A lawyer may reveal a confidence or secret of a client to the extent the lawyer reasonably believes necessary:
 - (1) to prevent reasonably certain substantial bodily harm or death;
 - (2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;
 - (3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;
 - (4) to secure legal advice about the lawyer's professional obligations;
 - (5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or
 - (6) to comply with other law or a court order.

- (c) Before revealing information under paragraph (b) (1), (2), or (3), the lawyer must, if feasible, make a good-faith effort to counsel the client to prevent the harm and advise the client of the lawyer's ability

to reveal information and the consequences thereof. Before revealing information under paragraph (b)(5) or (6), in controversies in which the client is not a complainant or a party, the lawyer must, if feasible, make a good faith effort to provide the client with reasonable notice of the intended disclosure.

- (d) As used in Rule 1.6, “confidence” refers to information protected by the attorney-client privilege under applicable law, and “secret” refers to other information relating to the representation if there is a reasonable prospect that revealing the information will adversely affect a material interest of the client or if the client has instructed the lawyer not to reveal such information.

RULE 1.7 *CONFLICT-OF-INTEREST: CURRENT CLIENTS*

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict-of-interest. A concurrent conflict-of-interest exists if:
 - (1) the representation of one client would be directly adverse to another client, even if representation would not occur in the same matter or in substantially related matters; or
 - (2) there is a significant risk that the representation of one or more clients would be materially limited by the lawyer’s responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
- (b) Notwithstanding the existence of a concurrent conflict-of-interest under paragraph (a), a lawyer may represent a client if:
 - (1) the lawyer reasonably believes that the lawyer would be able to provide competent and diligent representation to each affected client; and
 - (2) each affected client gives informed consent, confirmed in writing.
- (c) Under no circumstances may a lawyer represent a client if:

- (1) the representation is prohibited by law;
- (2) the representation involves the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

RULE 1.8 *CONFLICT-OF-INTEREST: CURRENT CLIENTS: SPECIFIC RULES*

- (a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:
 - (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;
 - (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and
 - (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.
- (b) A lawyer shall not use confidences or secrets of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.
- (c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

- (d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on confidences or secrets of the client.
- (e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:
 - (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and
 - (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.
- (f) A lawyer shall not accept compensation for representing a client from one other than the client unless:
 - (1) the client gives informed consent;
 - (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
 - (3) the confidences and secrets of a client are protected as required by Rule 1.6.
- (g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.
- (h) A lawyer shall not:

- (1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice; or
 - (2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.
- (i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:
- (1) acquire a lien authorized by law against the proceeds of such action or litigation to secure the lawyer's fee or expenses; and
 - (2) contract with a client for a reasonable contingent fee in a civil case, subject to the limitations in Rule 1.5(c) and (d).
- (j) A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.
- (k) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.
- (l) A lawyer related to another lawyer (as parent, child, sibling, domestic associate or spouse), ordinarily may not represent a client in a matter where the related lawyer is representing another party who is or shall be adverse to the lawyer's client, unless each client gives informed consent, confirmed in writing.

RULE 1.9 *DUTIES TO FORMER CLIENTS*

- (a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are

materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

- (b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client
 - (1) whose interests are materially adverse to that person; and
 - (2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter unless the former client gives informed consent, confirmed in writing.

- (c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:
 - (1) use confidences or secrets of a former client to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or
 - (2) reveal confidences or secrets of a former client except as these Rules would permit or require with respect to a client.

- (d) Matters are “substantially related” for purposes of this Rule if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client’s position in the subsequent matter.

RULE 1.10 *IMPUTATION OF CONFLICTS-OF-INTEREST: GENERAL RULE*

- (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 Rules 1.7 or 1.9, unless
 - (1) 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; or

- (2) the prohibition is based on Rule 1.9(a) or (b) and arises out of the disqualified lawyer's association with a prior firm, and
 - (i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom;
 - (ii) written notice is promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this Rule, which shall include a description of the screening procedures employed; a statement of the firm's and of the screened lawyer's compliance with these Rules; a statement that review may be available before a tribunal; and an agreement by the firm to respond promptly to any written inquiries or objections by the former client about the screening procedures; and
 - (iii) certifications of compliance with these Rules and with the screening procedures are provided to the former client by the screened lawyer and by a partner of the firm, at reasonable intervals upon the former client's written request and upon termination of the screening procedures.
- (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 Rules 1.6 and 1.9(c) that is material to the matter.

- (c) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.
- (d) For purposes of Rule 1.10 only, “firm” does not include government agencies. The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.
- (e) If a lawyer or law student affiliated both with a law school legal clinic and with one or more lawyers outside the clinic is required to decline representation of any client solely by virtue of this Rule 1.10, this rule imposes no disqualification on any other lawyer or law student who would otherwise be disqualified solely by reason of an affiliation with that individual, provided that the originally disqualified individual is screened from all participation in the matter at and outside the clinic.

**RULE 1.11 *SPECIAL CONFLICTS-OF-INTEREST OF FORMER AND
CURRENT GOVERNMENT OFFICERS AND EMPLOYEES***

- (a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:
 - (1) is subject to Rule 1.9(c); and
 - (2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate governmental officer or agency gives its informed consent, confirmed in writing, to the representation.
- (b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

- (1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and
 - (2) the appropriate governmental officer or agency gives its informed consent, confirmed in writing, to the representation.
- (c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule, the term “confidential government information” means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.
- (d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:
- (1) is subject to Rules 1.7 and 1.9; and
 - (2) shall not:
 - (i) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless:
 - (A) the appropriate governmental officer or agency gives its informed consent, confirmed in writing, to the representation; or

- (B) under applicable law, no one is or by lawful delegation may be authorized to act in the lawyer's stead in the matter.
 - (ii) negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 1.12(b) and subject to the conditions stated in Rule 1.12(b).
- (e) As used in this Rule, the term "matter" includes:
- (1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties, and
 - (2) any other matter covered by the conflict-of-interest rules of the appropriate government agency.

RULE 1.12 *FORMER JUDGE, ARBITRATOR, MEDIATOR OR OTHER THIRD-PARTY NEUTRAL*

- (a) Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator, or other third-party neutral.
- (b) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator, or other third-party neutral. A lawyer serving as a law clerk to a judge or other adjudicative officer may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating

personally and substantially, but only after the lawyer has notified the judge or other adjudicative officer.

- (c) If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:
 - (1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and
 - (2) written notice is promptly given to the parties and any appropriate tribunal to enable them to confirm compliance with the provisions of this Rule.
- (d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

RULE 1.13 ORGANIZATION AS CLIENT

- (a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.
- (b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best interest of the organization. In determining how to proceed, the lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters, and any other relevant considerations. Any measures taken shall be designed to minimize disruption of the organization and the risk of revealing confidences

and secrets to persons outside the organization. Such measures may include among others:

- (1) asking reconsideration of the matter;
 - (2) advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization; and
 - (3) referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act in behalf of the organization as determined by applicable law.
- (c) Except as provided in paragraph (d), if
- (1) despite the lawyer's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon action, or a refusal to act, that is clearly a violation of law, and
 - (2) likely to result in substantial injury to the organization, the lawyer may resign in accordance with Rule 1.16 and make such disclosures as are consistent with Rule 1.6, Rule 3.3, Rule 4.1 and Rule 8.3, but only to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.
- (d) Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.
- (e) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client as the organization when the lawyer knows

or reasonably should know that the organization's interests may be adverse to those of the constituents with whom the lawyer is dealing.

- (f) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.
- (g) A lawyer who acts contrary to this Rule but in conformity with promulgated federal law shall not be subject to discipline under this Rule, regardless whether such federal law is validly promulgated.

RULE 1.14 CLIENT WITH DIMINISHED CAPACITY

- (a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.
- (b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian *ad litem*, conservator or guardian.
- (c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

**RULE 1.15 *SAFEKEEPING PROPERTY, CLIENT TRUST ACCOUNTS,
INTEREST ON TRUST ACCOUNTS***

- (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.

- (b) (1) A lawyer shall deposit into a client trust account any advance payment of fees or retainer and any expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, except that an advance or retainer may be placed temporarily in a non-trust account, where necessary to effectuate payment by the client's chosen means (e.g., by credit card), so long as such funds are transferred promptly, and no later than two business days following receipt, into a client trust account. A lawyer shall not accept any advance payment or retainer into a non-trust account if the lawyer has any reason to suspect that the funds will not be successfully transferred into the client trust account within two business days of receipt. All such funds shall be deposited in one or more identifiable accounts maintained pursuant to Maine Bar Rule 6. No funds belonging to the lawyer or law firm shall be deposited therein except as follows:
 - (i) Funds reasonably sufficient to pay institutional service charges may be deposited therein; and
 - (ii) Funds belonging in part to a client and in part presently or potentially to a lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive the funds is disputed by the client; in that event the disputed portion shall not be withdrawn until the dispute is finally resolved.

- (2) A lawyer shall:
 - (i) Promptly notify a client of the receipt of the client's funds, securities, or other properties;

- (ii) Identify and label securities and properties of a client promptly upon receipt and place them in a safe-deposit box or other place of safekeeping as soon as practicable;
 - (iii) Maintain complete records of all funds, securities and other properties of a client coming into possession of the lawyer and render prompt and appropriate accounts to the client regarding them, which records shall be kept by the lawyer and shall be preserved for a period of eight years after termination of the representation; and
 - (iv) Promptly pay or deliver to the client, as requested by the client, the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.
- (3) Unless the client directs otherwise, when a lawyer or law firm reasonably expects that client funds will earn interest or dividends for the client in excess of the costs incurred to secure such income, such funds shall be deposited in a client trust account that may be either
- (i) separate trust account for the particular client or client's matter, on which the earnings net of any transaction costs or other account-related charges will be paid or credited to the client; or
 - (ii) A pooled trust account with subaccounting which will provide for computation of earnings accrued on each client's funds and the payment thereon, net of any transaction costs or other account-related charges to the client.
- (4) All funds of any client held by the lawyer or law firm that are small in amount or held for a short period of time so that they cannot earn interest or dividends for the client in excess of the costs incurred to secure such income shall be deposited in an Interest on Lawyer's Trust Account (IOLTA) account. The

account shall be established and maintained pursuant to Maine Bar Rule 6.

(5) [Reserved – abrogated by July 2015 amendment.]

(6) [Reserved – abrogated by July 2015 amendment.]

(7) For purposes of this rule, the following definitions apply:

(i) “Interest or dividends in excess of costs” means the net of interest or dividends earned on a particular amount of one client’s funds over the administrative costs allocable to that amount. In estimating the gross amount of interest or dividends to be earned, 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 that portion of the following costs properly allocable to a particular amount of one client’s funds paid to a lawyer or law firm:

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

(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 or dividends; and obtaining information and preparing or forwarding any returns or reports that may be required by a revenue taxing agency as to the interest or dividends earned on a client’s funds.

(c) [Reserved – included in (b), above.]

- (d) 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.
- (e) When in the course of representation, a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.
- (f) Upon termination of representation, a lawyer shall return to the client or retain and safeguard in a retrievable format all information and data in the lawyer's possession to which the client is entitled. Unless information and data are returned to the client or as otherwise ordered by a court, the lawyer shall retain and safeguard such information and data for a minimum of eight (8) years, except for client records in the lawyer's possession that have intrinsic value in the particular version, such as original signed documents, which must be retained and safeguarded until such time as they are out of date and no longer of consequence. A lawyer may enter into a voluntary written agreement with the client for a different period. In retaining and disposing of files, a lawyer shall employ means consistent with all other duties under these rules, including the duty to preserve confidential client information.

RULE 1.16 *DECLINING OR TERMINATING REPRESENTATION*

- (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
- (1) the representation will result in violation of the rules of professional conduct or other law;

- (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
 - (3) the lawyer is discharged.
- (b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:
- (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
 - (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
 - (3) the client has used the lawyer's services to perpetrate a crime or fraud;
 - (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
 - (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
 - (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
 - (7) other good cause for withdrawal exists.
- (c) A lawyer must comply with applicable law and rules requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation. This subsection (c) does not apply to the

automatic withdrawal of a lawyer upon completion of a limited representation made pursuant to Rule 1.2.

- (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, including giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee or expense that has not been earned or incurred, and complying with Rule 1.15(f) concerning the information and data to which the client is entitled.

RULE 1.17 *SALE OF LAW PRACTICE*

[Rule 1.17 replaced by Rule 1.17A, effective September 1, 2015]

RULE 1.17A *SALE OF LAW PRACTICE*

A lawyer or a law firm may sell or purchase a law practice, or an area of law practice, including good will, if all of the following conditions are satisfied:

(a) The purchaser, who must be authorized to represent clients in the State of Maine and in matters to be transferred, assumes the obligations of an attorney to the clients whose files are transferred.

(b) The seller gives the following notices:

(1) written notice to each of the seller's current or former clients affected by the sale and to the Board of Overseers of the Bar regarding:

(A) the proposed sale including the name of the purchasing attorney or the names of the attorneys who practice within the purchasing firm;

(B) the client's right to retain other counsel or to take possession of the file;

(C) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice; and

(D) the terms of any proposed change in the fee arrangement authorized by paragraph (c).

(2) If a client cannot be given written notice, the representation of that client may be transferred to the purchaser only with the approval of the Board of Overseers of the Bar through its Bar Counsel. If Bar Counsel and the seller cannot agree on the steps adequate to attempt to give written notice, either party may petition the Supreme Judicial Court for an order from a Single Justice approving the transfer or ordering preconditions to transfer.

(3) Further notice shall be given by publication in digital and paper versions of a newspaper of general circulation in each county in which the seller is engaging in the practice of law, at least thirty days before the anticipated transfer of files. Such notice shall include the anticipated date of sale and identification of the purchasing lawyer or firm, but not the identities of the clients being transferred.

(c) The fees charged clients shall not be increased by reason of the sale.

RULE 1.18 *DUTIES TO PROSPECTIVE CLIENT*

(a) A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is

associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

- (d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:
 - (1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:
 - (2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and
 - (i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and
 - (ii) written notice is promptly given to the prospective client.

COUNSELOR

RULE 2.1 *ADVISOR*

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social, emotional and political factors, that may be relevant to the client's situation.

RULE 2.2 *[RESERVED IN THE MODEL RULES]*

RULE 2.3 *EVALUATION FOR USE BY THIRD PERSONS*

- (a) A lawyer may provide an evaluation of a matter affecting a client for the use of someone other than the client if the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client.

- (b) When the lawyer knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the lawyer shall not provide the evaluation unless the client gives informed consent.
- (c) Except as disclosure is authorized in connection with a report of an evaluation, confidences and secrets are otherwise protected by Rule 1.6.

RULE 2.4 *LAWYER SERVING AS THIRD-PARTY NEUTRAL*

- (a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.
- (b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.
- (c) The role of third party neutral does not create a lawyer-client relationship with any of the parties and does not constitute representation of any of them. The lawyer shall not attempt to advance the interest of any of the parties at the expense of any other party.
- (d) The lawyer shall not use any conduct, discussions or statements made by any party in the course of any alternative dispute resolution process to the disadvantage of any party to the process, or, without the informed consent of the parties, to the advantage of the lawyer or a third person.
- (e) When acting as a mediator, the lawyer shall undertake such role subject to the following additional conditions:

- (1) The lawyer must clearly inform the parties of the nature and limits of the lawyer's role as mediator and should disclose any interest or relationship likely to affect the lawyer's impartiality or that might create an appearance of partiality or bias. The parties must consent to the arrangement unless they are in mediation pursuant to a legal mandate.
- (2) The lawyer may draft a settlement agreement or instrument reflecting the parties' resolution of the matter but must advise and encourage any party represented by independent counsel to consult with that counsel, and any unrepresented party to seek independent legal advice, before executing it.
- (3) The lawyer shall withdraw as mediator if any of the parties so requests, or if any of the conditions stated in this subdivision (e) is no longer satisfied. Upon withdrawal, or upon conclusion of the mediation, the lawyer shall not represent any of the parties in the matter that was the subject of the mediation, or in any related matter.

ADVOCATE

RULE 3.1 *MERITORIOUS CLAIMS AND CONTENTIONS*

(a) A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a non-frivolous basis in law and fact for doing so, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

(b) A lawyer shall not report or threaten to report misconduct to a criminal, administrative, or disciplinary authority solely to obtain an advantage in a civil matter.

RULE 3.2 *EXPEDITING LITIGATION*

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

RULE 3.3 *CANDOR TOWARD THE TRIBUNAL*

- (a) A lawyer shall not knowingly:
- (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
 - (2) misquote to a tribunal the language of a book, statute, ordinance, rule or decision or, with knowledge of its invalidity and without disclosing such knowledge, cite as authority, a decision that has been overruled or a statute, ordinance or rule that has been repealed or declared unconstitutional;
 - (3) offer evidence that is false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence that the lawyer reasonably believes is false, except a lawyer in a criminal matter may not refuse to offer the testimony of a defendant, unless the lawyer knows from the defendant that such testimony is false.
- (b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.
- (c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

- (d) In an *ex parte* proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

RULE 3.4 *FAIRNESS TO OPPOSING PARTY AND COUNSEL*

A lawyer shall not:

- (a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;
- (b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
- (c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;
- (d) [Reserved]
- (e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or
- (f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:
 - (1) the person is a relative or an employee or other agent of a client; and
 - (2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

RULE 3.5 *IMPARTIALITY AND DECORUM OF THE TRIBUNAL*

A lawyer shall not:

- (a) seek to influence a judge, juror, prospective juror or other tribunal official by means prohibited by law; nor shall a lawyer, directly or indirectly give or lend anything of value to a judge, tribunal official, or employee of a tribunal unless the personal or family relationship between the lawyer and the judge, tribunal official, or employee is such that gifts are customarily given and exchanged;
- (b) communicate *ex parte* with such a person, directly or indirectly, during the proceeding, concerning such proceeding, unless authorized to do so by law or court order;
- (c) communicate with a juror or prospective juror after discharge of the jury if:
 - (1) the communication is prohibited by law or court order;¹
 - (2) the juror has made known to the lawyer a desire not to communicate; or
 - (3) the communication involves misrepresentation, coercion, duress or harassment; or
- (d) engage in conduct intended to disrupt a tribunal; or
- (e) fail to reveal promptly to the court knowledge of improper conduct by a juror, prospective juror, or member of the jury pool, or by another toward a juror or member of the jury pool or a member of a juror's or jury pool member's family.

Paragraph 3.5(a) does not preclude contributions to election campaigns of public officers.

¹ There is a distinction with respect to communication with a juror or prospective juror, after discharge of the jury panel, under state and federal law in Maine.

RULE 3.6 TRIAL PUBLICITY

A lawyer involved in the prosecution or defense of a criminal matter or in representing a party to a civil cause shall not make or participate in making any extra-judicial statement which poses a substantial danger of interference with the administration of justice.

RULE 3.7 LAWYER AS WITNESS

- (a) A lawyer shall not act as advocate at a tribunal in which the lawyer is likely to be a necessary witness unless:
- (1) the testimony relates to an uncontested issue;
 - (2) the testimony relates to the nature and value of legal services rendered in the case; or
 - (3) disqualification of the lawyer would work substantial hardship on the client.
- (b) A lawyer may act as advocate in a tribunal in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

RULE 3.8 SPECIAL RESPONSIBILITIES OF A PROSECUTOR

The prosecutor shall:

- (a) refrain from prosecuting a criminal or juvenile charge that the prosecutor knows is not supported by probable cause;
- (b) make timely disclosure in a criminal or juvenile case to counsel for the defendant, or to a defendant without counsel, of the existence of evidence or information known to the prosecutor after diligent inquiry and within the prosecutor's possession or control, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment;

- (c) refrain from conducting a civil, juvenile, or criminal case against any person whom the prosecutor knows that the prosecutor represents or has represented as a client;
- (d) refrain from conducting a civil, juvenile, or criminal case against any person relative to a matter in which the prosecutor knows that the prosecutor represents or has represented a complaining witness.

RULE 3.9 *ADVOCATE IN NONADJUDICATIVE PROCEEDINGS*

A lawyer representing a client before a legislative body or administrative agency in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rules 3.3(a) through (c), 3.4(a) through (c), and 3.5, and Rules 4.1 through 4.4. This Rule only applies when a lawyer represents a client in connection with an official hearing or meeting of a governmental agency or a legislative body to which the lawyer or the lawyer's client is presenting evidence or argument. It does not apply to representation of a client in a negotiation or other bilateral transaction with a governmental agency or in connection with an application for a license or other privilege or the client's compliance with generally applicable reporting requirements, such as the filing of income-tax returns. Nor does it apply to the representation of a client in connection with an investigation or examination of the client's affairs conducted by government investigators or examiners.

TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

RULE 4.1 TRUTHFULNESS IN STATEMENTS TO OTHERS

In the course of representing a client a lawyer shall not knowingly:

- (a) make a false statement of material fact or law to a third person; or
- (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

RULE 4.2 *COMMUNICATION WITH PERSON REPRESENTED BY COUNSEL AND LIMITED REPRESENTATIONS*

- (a) In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order. Specific limitations on communications by a prosecutor are contained in (c).

- (b) An otherwise unrepresented party to whom limited representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this Rule, except to the extent the limited representation attorney provides other counsel written notice of a time period within which other counsel shall communicate only with the limited representation attorney.

- (c) If a prosecutor knows a person is represented with respect to the matter under investigation:
 - (1) the prosecutor shall not communicate directly with that person absent consent of the other lawyer or a court order; and

 - (2) The prosecutor shall not extend, through any third person an offer to meet with the prosecutor or an offer to enter into plea negotiations with the prosecutor, or an offer of a plea agreement absent consent of the other lawyer or a court order.

Communications by the prosecutor in the form of advice or instruction to law enforcement agents about a person a prosecutor knows is represented with respect to a matter under investigation are authorized by this Rule and are governed by the substantive law.

RULE 4.3 *DEALING WITH UNREPRESENTED PERSON*

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested.

When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, but may provide legal information to and may negotiate with the unrepresented person. The lawyer may recommend that such unrepresented client secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

**RULE 4.4 *RESPECT FOR RIGHTS OF THIRD PERSONS;
INADVERTENT DISCLOSURES***

- (a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

- (b) A lawyer who receives a writing and has reasonable cause to believe the writing may have been inadvertently disclosed and contain confidential information or be subject to a claim of privilege or of protection as trial preparation material:
 - (1) shall not read the writing or, if he or she has begun to do so, shall stop reading the writing;

 - (2) shall notify the sender of the receipt of the writing; and

 - (3) shall promptly return, destroy or sequester the specified information and any copies.

The recipient may not use or disclose the information in the writing until the claim is resolved, formally or informally. The sending or receiving lawyer may promptly present the writing to a tribunal under seal for a determination of the claim.

LAW FIRMS AND ASSOCIATIONS

RULE 5.1 *RESPONSIBILITIES OF PARTNERS, MANAGERS, AND SUPERVISORS*

- (a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

- (b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

- (c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:
 - (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

 - (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

RULE 5.2 *RESPONSIBILITIES OF A SUBORDINATE LAWYER*

- (a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

- (b) A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

RULE 5.3 *RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS*

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for the conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

RULE 5.4 *PROFESSIONAL INDEPENDENCE OF A LAWYER*

- (a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:
 - (1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

- (2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer;
 - (3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; provided that the amounts paid to nonlawyer employees in addition to fixed salary,
 - (i) are not based upon business brought to the law firm by such employees;
 - (ii) are not based upon services performed by such employees in a particular case; and
 - (iii) do not constitute the greater part of the total remuneration of such employees;
 - (4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.
- (b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.
- (c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.
- (d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:
- (1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

- (2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or
- (3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

**RULE 5.5 *UNAUTHORIZED PRACTICE OF LAW;*
*MULTIJURISDICTIONAL PRACTICE OF LAW***

- (a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.
- (b) A lawyer who is not admitted to practice in this jurisdiction shall not:
 - (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or
 - (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.
- (c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services that arise out of or are reasonably related to the representation of an existing client on a temporary basis in this jurisdiction that:
 - (1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;
 - (2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by

law or order to appear in such proceeding or reasonably expects to be so authorized;

- (3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires *pro hac vice* admission; or
 - (4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.
- (d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:
- (1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires *pro hac vice* admission; or
 - (2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

RULE 5.6 *RESTRICTIONS ON THE RIGHT TO PRACTICE*

A lawyer shall not participate in offering or making:

- (a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or
- (b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.

RULE 5.7 *RESPONSIBILITIES REGARDING LAW-RELATED SERVICES*

- (a) A lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law-related services, as defined in paragraph (b), if the law-related services are provided:
- (1) by the lawyer in circumstances that are not distinct from the lawyer’s provision of legal services to clients; or
 - (2) in other circumstances by an entity controlled by the lawyer individually or with others if the lawyer fails to take reasonable measures to assure that a person obtaining the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not exist.
- (b) The term “law-related services” denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.

PUBLIC SERVICE

RULE 6.1 *VOLUNTARY PRO BONO PUBLICO SERVICE*

Every lawyer has a professional responsibility to provide legal services to those unable to pay.

Aspirational Goals

In fulfilling this responsibility, the lawyer should provide legal services without fee or expectation of fee to:

- (1) persons of limited means; or
- (2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means;

and

- (3) individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate; or
- (4) activities for improving the law, the legal system or the legal profession.

In addition, a lawyer voluntarily should contribute financial support to organizations that provide legal services to persons of limited means.

RULE 6.2 *ACCEPTING APPOINTMENTS*

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

- (a) representing the client is likely to result in violation of the Rules of Professional Conduct or other law;
- (b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or
- (c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

RULE 6.3 *MEMBERSHIP IN LEGAL SERVICES ORGANIZATION*

A lawyer may serve as a director, officer or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

- (a) if participating in the decision or action would be incompatible with the lawyer's obligations to a client under Rule 1.7; or
- (b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

RULE 6.4 *LAW REFORM ACTIVITIES AFFECTING CLIENT INTEREST*

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially affected by a decision in which the lawyer participates, the lawyer shall disclose that fact to the organization, but need not identify the client.

RULE 6.5 *NONPROFIT AND COURT-ANNEXED LIMITED LEGAL SERVICES AND PROGRAMS*

- (a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:
 - (1) is subject to Rules 1.7 and 1.9(a) only if the lawyer is aware that the representation of the client involves a conflict-of-interest; and
 - (2) is subject to Rule 1.10 only if the lawyer is aware that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.
- (b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

INFORMATION ABOUT LEGAL SERVICES

RULE 7.1 *COMMUNICATIONS CONCERNING A LAWYER'S SERVICES*

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

RULE 7.2 *ADVERTISING*

- (a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.
- (b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may
 - (1) pay the reasonable costs of advertisements or communications permitted by this Rule;
 - (2) pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service operated, sponsored or approved by a bar association or bar regulatory organization;
 - (3) pay for a law practice in accordance with Rule 1.17; and
 - (4) refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if
 - (i) the reciprocal referral agreement is not exclusive, and
 - (ii) the client is informed of the existence and nature of the agreement.

- (c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

RULE 7.2-A *ASPIRATIONAL GOALS FOR LAWYER ADVERTISING*

These aspirational goals are intended to provide suggested objectives that all lawyers who engage in advertising their services should be encouraged to achieve in order that lawyer advertising may be more effective and reflect the professionalism of the legal community.

- (a) A lawyer should ensure that any advertising that the lawyer communicates or causes to be communicated by publication, broadcast, or other media is informative to potential clients, is presented in an understandable and dignified fashion, and accurately portrays the serious purpose of legal services and our judicial system. When advertising, though not false or misleading, degenerates into undignified and unprofessional presentations, the public is not served, the reputation of the lawyer who advertises may suffer, and the public's confidence in the legal profession and the judicial system may be harmed. Lawyers who advertise should recognize their obligation to advance the public's confidence in the legal profession and our system of justice. In furtherance of these goals, lawyers who advertise should:
- (1) avoid statements, claims, or comparisons that cannot be objectively substantiated;
 - (2) avoid representations that demean opposing parties, opposing lawyers, the judiciary, or others involved in the legal process;
 - (3) avoid crass representations or dramatizations, hawkish spokespersons, slapstick routines, outlandish settings, unduly dramatic music, sensational sound effects, and unseemly slogans that undermine the serious purpose of legal services and the judicial system;

- (4) avoid representations to potential clients that suggest promises of results or will create unjustified expectations such as “guaranteed results” or “we get top dollar awards”;
 - (5) clearly identify the use of professional actors or other spokespersons who may not be providing the legal services advertised unless it is readily apparent from the context of the advertisement that the actor or spokesperson does not provide the advertised legal services (e.g., a radio advertisement in which the speaker does not purport to be the lawyer or a member of the firm);
 - (6) avoid the use of simulated scenes, actors who portray lawyers, clients or participants in the judicial system, and dramatizations unless they are clearly identified as such;
 - (7) avoid representations that suggest that the ingenuity or prior record of a lawyer, rather than the merits of the claim, are the principal factors likely to determine the outcome of the representation; and
 - (8) avoid representations designed to appeal to greed, exploit the fears of potential clients, or promote a suggestion of violence.
- (b) The responsibilities set forth in this Rule are aspirational and not to be enforced through disciplinary process.

RULE 7.3 *DIRECT CONTACT WITH PROSPECTIVE CLIENTS*

- (a) A lawyer, in person, by live telephone, or by real-time electronic contact, shall not solicit professional employment from a non-commercial client if such solicitation involves or has substantial potential of harassing conduct, coercion, duress, compulsion, intimidation or unwarranted promises of benefits. The prospective client’s sophistication regarding legal matters; the physical, emotional state of the prospective non-commercial client; and the circumstances in which the solicitation is made are factors to be considered when evaluating the solicitation.

- (b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if the prospective client has made known to the lawyer a desire not to be solicited by the lawyer.
- (c) [Reserved]
- (d) Subject to the prohibitions in paragraphs (a) and (b), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.
- (e) Subject to the prohibitions in paragraphs (a) and (b), a lawyer may participate in, and announce the availability of, an approved courthouse legal assistance program that offers free representation to unrepresented clients.

RULE 7.4 *COMMUNICATION OF FIELD OF PRACTICE AND SPECIALIZATION*

- (a) A lawyer may communicate the fact that the lawyer does or does not practice, concentrate or specialize in particular fields of law.
- (b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation “Patent Attorney” or a substantially similar designation.
- (c) A lawyer engaged in Admiralty practice may use the designation “Admiralty Attorney,” “Proctor in Admiralty,” or a substantially similar designation.
- (d) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:
 - (1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate state authority or

that has been accredited by the Maine Board of Overseers of the Bar; and

- (2) the name of the certifying organization is clearly identified in the communication.

RULE 7.5 *FIRM NAMES AND LETTERHEADS*

- (a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.
- (b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.
- (c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.
- (d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

RULE 7.6 *POLITICAL CONTRIBUTIONS TO OBTAIN LEGAL ENGAGEMENTS OR APPOINTMENTS BY JUDGES*

A lawyer or law firm shall not accept a government legal engagement or an appointment by a judge if the lawyer or law firm makes a political contribution or solicits political contributions for the purpose of obtaining or being considered for that type of legal engagement or appointment.

MAINTAINING THE INTEGRITY OF THE PROFESSION

RULE 8.1 *BAR ADMISSION AND DISCIPLINARY MATTERS*

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

- (a) knowingly make a false statement of material fact; or
- (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

RULE 8.2 *JUDICIAL AND LEGAL OFFICIALS*

- (a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.
- (b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

RULE 8.3 *REPORTING PROFESSIONAL MISCONDUCT*

- (a) A lawyer who knows that another lawyer has committed a violation of the Maine Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.²

² In Maine, the appropriate professional authority will be the Maine Board of Overseers of the Bar, or in certain circumstances, as described in the Maine Rules for Maine Assistance Program for Lawyers and Judges, the Maine Assistance Program for Lawyers and Judges.

- (b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate professional authority.³
- (c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information obtained in the course of a lawyer's or judge's participation in the Maine Assistance Program for Lawyers and Judges, or an equivalent peer assistance program approved by a state's highest court.

RULE 8.4 MISCONDUCT

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate any provision of either the Maine Rules of Professional Conduct or the Maine Bar Rules, or knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal or unlawful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Maine Rules of Professional Conduct, the Maine Bar Rules or law;

³ In Maine, the appropriate professional authority will be the Committee on Judicial Responsibility and Disability, or, in certain circumstances, as described in the Maine Rules for Maine Assistance Program for Lawyers and Judges, the Maine Assistance Program for Lawyers and Judges.

- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or law; or
- (g) engage in conduct or communication related to the practice of law that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, or gender identity.
 - (1) “Discrimination” on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, or gender identity as used in this section means conduct or communication that a lawyer knows or reasonably should know manifests an intention: to treat a person as inferior based on one or more of the characteristics listed in this paragraph; to disregard relevant considerations of individual characteristics or merit because of one or more of the listed characteristics; or to cause or attempt to cause interference with the fair administration of justice based on one or more of the listed characteristics.
 - (2) “Harassment” on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, or gender identity as used in this section means derogatory or demeaning conduct or communication and includes, but is not limited to, unwelcome sexual advances, or other conduct or communication unwelcome due to its implicit or explicit sexual content.
 - (3) “Related to the practice of law” as used in the section means occurring in the course of representing clients; interacting with witnesses, coworkers, court personnel, lawyers, and others while engaged in the practice of law; or operating or managing a law firm or law practice.
 - (4) Declining representation, limiting one’s practice to particular clients or types of clients, and advocacy of policy positions or changes in the law are not regulated by Rule 8.4(g).

RULE 8.5 *DISCIPLINARY AUTHORITY; CHOICE OF LAW*

- (a) **Disciplinary Authority.** A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.
- (b) **Choice of Law.** In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:
- (1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and
 - (2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

*******END OF DOCUMENT*******