



Don't Fumble the Ethical Football

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Agenda

1 Rules

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Rules

Model 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.”

Model Rule 1.1, Comment 5

Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation.

Model Rule 1.1, Comment 8

To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, *including the benefits and risks associated with relevant technology* [emphasis added], engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

Jurisdictions Not Adopting Comment 8

- Alabama
- Georgia
- Maine
- Maryland
- Mississippi
- Nevada
- New Jersey
- Oregon
- Rhode Island
- South Dakota
- Washington, DC

Model Rule 1.1 Is Flexible

The Chief Reporter of the ABA Commission on Ethics 20/20 opined that "a competent lawyer's skill set needs to evolve along with technology itself," and "the specific skills lawyers will need in the decades ahead are difficult to imagine."

Model Rule 1.2: Scope of Representation and Allocation of Authority Between Client and Lawyer

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.

Model Rule 1.3: Diligence

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

Model Rule 1.6: (a) Confidentiality of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

Model Rule 1.6: (b) Confidentiality of Information

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

- (1) to prevent reasonably certain death or substantial bodily harm;
- (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 compliance with these Rules;
- (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;
- (6) to comply with other law or a court order; or
- (7) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

Model Rule 1.6: (c) Confidentiality of Information

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

Model Rule 1.7: Client-Lawyer Relationship

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 will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will 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 will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve 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; and
- (4) each affected client gives informed consent, confirmed in writing.

Model Rule 1.13: Organization as Client

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

Model 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 and political factors, that may be relevant to the client's situation.

Model 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.

Model Rule 4.3: Dealing with Unrepresented Person

Transactions With Persons Other Than Clients

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, other than the advice to 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 5.1: Responsibilities of a Partner or Supervisory Lawyer

Law Firms And Associations

(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 6.1: Voluntary Pro Bono Publico Service

Public Service

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial majority of the (50) hours of 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

(b) provide any additional services through:

(1) delivery of legal services at no fee or substantially reduced fee to 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;

(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, the legal system or the legal profession.

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

Model Rule 8.3: Reporting Professional Misconduct

Maintaining The Integrity of The Profession

(a) A lawyer **who knows** [emphasis added] that another lawyer has committed a violation of the 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.

(c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while participating in an approved lawyers assistance program.

The ABA and Artificial Intelligence

Resolution 604 (February 6, 2023) addresses how attorneys, regulators and other stakeholders should assess issues of accountability, transparency and traceability in AI and calls on organizations that design, develop, deploy and use AI to follow these guidelines:

- Developers of AI should ensure their products, services, systems and capabilities are subject to human authority, oversight and control.
- Organizations should be accountable for consequences related to their use of AI, including any legally cognizable injury or harm caused by their actions, unless they have taken reasonable steps to prevent harm or injury.
- Developers should ensure the transparency and traceability of their AI and protect related intellectual property by documenting key decisions made regarding the design and risk of data sets, procedures and outcomes underlying their AI.



Scenarios

Shiny New Tool



The Shiny New Tool

You are the sole attorney for the company and your CEO comes to you with an urgent request. The counterparty in which you've been in a long-running dispute has suddenly reached out to settle. The counterparty has a hard deadline of 48 hours as they're closing on a transaction that has prompted their sudden desire and urgency to settle the dispute. This dispute has been a thorn in the company's side and the CEO is asking you to turn a draft settlement agreement around ASAP.

You've been using ChatGPT from OpenAI to do research and summarize case law. You believe the fastest way to draft the settlement agreement would be to use ChatGPT.

What do you need to consider before using ChatGPT to draft the settlement agreement?

The New
Guy



The New Guy

You are the new GC of a privately held Fintech startup that is working on a solution to apply blockchain technologies for banks to comply with AML laws, first in the U.S. and then abroad. This is your first in-house role, and you are quite excited to strengthen your personal brand on technical competence after developing e-discovery expertise in private practice.

In welcoming you, the CIO states: "Our promise to customers is to increase compliance and reduce costs using AI. The founder needs a memo from you giving a legal perspective on DAOs and what is going on in the regulatory landscape – look closely at FinCen. Remember that our marketing will include a thorough legal risk analysis for early adopters. Make sure our security systems are adequate and our policies on passwords, encryption, anti-virus, all our stuff in the cloud, etc. is up to speed. You might need to review and fix our third-party contracts. Mark everything as privileged and remember open source is in our bones. I am really psyched that we hired someone with deep technical competence."

Where do you even begin?

Show Me the
Money



The “See How It Fits” App (a.k.a., Show Me the Money)

You work for a fast fashion clothing retailer with retail locations throughout the Americas, Europe, and Asia. Your company developed a “see how it fits” app. After agreeing to the privacy and data policies that allows the company to use customer data for any legally permissible use, shoppers can use the scanning feature to upload photos of themselves and “try on” clothes and accessories in a virtual fitting room. The app has led to increased sales, fewer returns, and increased brand engagement.

A weight loss company has approached your company about buying your data for their own marketing purposes. Your company is excited about this possible partnership and is envisioning other companies they could partner with especially given the softening economy and need for new revenue streams.

Your general counsel has asked you to prepare a memo exploring the data sale.

Considering your ethical obligations, where do you begin?

The Business That Doesn't Listen



The Business That Doesn't Listen

As a solo attorney, you're responsible for several roles including contract administration. A member of the business team is pushing an amendment that you have advised against as counsel, for multiple reasons, and have assessed that your company faces a small but real risk by entering into this agreement. You have stated your objections in a memo to the COO and CEO but the business unit prevails. You normally would sign this amendment but other people in your company could do so.

Do you have any ethical obligation or grounds to refuse to sign the contract?



Pillow Talk

Pillow Talk

You're the CLO at a publicly-traded company. Like many others in your industry, your company uses AI in several areas including in hiring. One of your younger attorneys maintains a consumer-oriented blog, several social media accounts related to law and technology and is a frequent critic of Big Tech.

As the attorney has gained national prominence, senior management and HR have become increasingly uncomfortable with the attorney's activism and are concerned how this may affect the company's reputation and brand. Just this past week, the attorney wrote a blog post highly critical of the use of AI in the hiring process and extensively discussed the vendor your company uses. The attorney has also been interviewed in the mainstream media and has made several cable news appearances discussing various privacy laws around the country as they relate to individuals.

You have been asked to investigate and learn that this employee had been in a romantic relationship with an employee of the vendor AI company. What should you consider and do you have any ethical worries?

Non-Profit Board Service



Non-Profit Board Service

You're a deputy general counsel specializing in IP in the financial services industry. Your office location supports a local private K-12 school which serves more than 500 children in a disadvantaged area. Your company gives the school a considerable operating grant every year to help meet operating expenses and employees are encouraged to volunteer with the school and students.

Someone at your company always holds a seat on the board and you were asked to serve to fill a vacancy. The principal and chair told you that they were eager to have you join the board as they have never had an attorney serve and they hope that you can help the school minimize its legal spend.

Recently the school received a large grant and the board had decided to upgrade its IT infrastructure. They have asked you to gather bids, review proposals, and make a vendor recommendation. You were also asked to update the school's electronic device and internet usage policies for employee and students which was last revised in the mid-2010s. The school would also like to expand to include a pre-K program and has asked you to speak to your company to fund it.

What should you do, considering the ethics rules?



Thank You

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APPENDIX

Don't Fumble the Ethical Football

ACC Northeast
October 5, 2023

October 5, 2023 | Proprietary and Confidential

MR 1.1

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

FOLLOW:

- Maine
- Massachusetts
- Vermont

MR 1.1 – New Hampshire

- (a) A lawyer shall provide competent representation to a client.
- (b) (b) Legal competence requires at a minimum: (1) specific knowledge about the fields of law in which the lawyer practices; (2) performance of the techniques of practice with skill; (3) identification of areas beyond the lawyer's competence and bringing those areas to the client's attention; (4) proper preparation; and (5) attention to details and schedules necessary to assure that the matter undertaken is completed with no avoidable harm to the client's interest.
- (c) (c) In the performance of client service, a lawyer shall at a minimum: (1) gather sufficient facts regarding the client's problem from the client, and from other relevant sources; (2) formulate the material issues raised, determine applicable law and identify alternative legal responses; (3) develop a strategy, in consultation with the client, for solving the legal problems of the client; and (4) undertake actions on the client's behalf in a timely and effective manner including, where appropriate, associating with another lawyer who possesses the skill and knowledge required to assure competent representation.

MR 1.1 – Rhode Island

Same as MR

Adds: A lawyer and client may agree, pursuant to Rule 1.2, to limit the scope of the representation with respect to a matter. In such circumstances, competence means the knowledge, skill, thoroughness, and preparation reasonably necessary for the limited scope representation.

MR 1.2: Scope of Representation & Allocation of Authority Between Client & Lawyer

Client-Lawyer Relationship

- (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. 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 the representation if the limitation is reasonable under the circumstances and the client gives informed consent.
- (d) 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.

MR 1.2: Scope of Representation & Allocation of Authority Between Client & Lawyer – Maine

- (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) (b) Same as MR.
- (c) (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) (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) Same as MR 1.2(d)

**As of January 27, 2020*

MR 1.2: Scope of Representation & Allocation of Authority Between Client & Lawyer – Massachusetts

- (a) A lawyer shall seek the lawful objectives of his or her client through reasonably available means permitted by law and these Rules. A lawyer does not violate this Rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of his or her client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process. A lawyer shall abide by a client's decision whether to accept an offer of settlement of 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) (b) Same as MR.
- (c) (c) Same as MR.
- (d) (d) Same as MR.

**As of January 27, 2020*



MR 1.2: Scope of Representation & Allocation of Authority Between Client & Lawyer – New Hampshire

- (a) Subject to paragraphs (c), (d), and (e), 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.
- (b) (b) Same as MR.
- (c) (c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. In providing limited representation, the lawyer's responsibilities to the client, the court and third parties remain as defined by these Rules as viewed in the context of the limited scope of the representation itself; and court rules when applicable.
- (d) (d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, except as stated in paragraph
- (e) (e), 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. (e) A lawyer may counsel or assist a client regarding conduct expressly permitted by state or local law that conflicts with federal law, provided that the lawyer counsels the client about the potential legal consequence of the client's proposed course of conduct under applicable federal law.
- (f) (f) It is not inconsistent with the lawyer's duty to seek the lawful objectives of a client through reasonably available means, for the lawyer to accede to reasonable requests of opposing counsel that do not prejudice the rights of the client, avoid the use of offensive or dilatory tactics, or treat opposing counsel or an opposing party with civility.
- (g) (g) In addition to requirements set forth in Rule 1.2(c), (1) a lawyer may provide limited representation to a client who is or may become involved in a proceeding before a tribunal (hereafter referred to as litigation), provided that the limitations are fully disclosed and explained, and the client gives informed consent to the limited representation. The form set forth in section (g) of this Rule has been created to facilitate disclosure and explanation of the limited nature of representation in litigation. Although not prohibited, the provision of limited As of February 22, 2022 15 representation to a client who is involved in litigation and who is entitled as a matter of law to the appointment of counsel is discouraged. (2) a lawyer who has not entered an applicable limited appearance, and who provides assistance in drafting pleadings, shall advise the client to comply with any rules of the tribunal regarding participation of the lawyer in support of a pro se litigant.

(h) (Sample form

Last accessed 1/27/20 here: https://www.courts.state.nh.us/rules/pcon/pcon-1_2.htm



MR 1.2: Scope of Representation & Allocation of Authority Between Client & Lawyer – Rhode Island

- (a) Same as MR.
- (b) (b) Same as MR.
- (c) (c) Same as MR 1.2(d).
- (d) (d) Limited Scope Representation. A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. The client must provide knowing and informed consent as part of the written limited scope representation engagement or retainer agreement. Upon entering into a written limited scope representation engagement or retainer agreement, an attorney/client relationship arises between the client and lawyer. (1) For limited scope representation matters involving only the provision of drafting services, such as drafting a pleading, motion, or other written submission. The lawyer shall sign the document(s) and disclose thereon his or her identity and the nature and extent of the assistance that he or she is providing to the tribunal and to all parties to the litigation. The lawyer shall also indicate on the written document that his or her signature does not constitute an entry of appearance or otherwise mean that the lawyer represents the client in the matter beyond assisting in the preparation of the document(s). The attorney/client relationship between the client and the lawyer engaged to provide limited scope drafting services shall terminate in accordance with Rule 1.16(d) upon the filing of all document(s) the lawyer was engaged to draft. (2) For limited scope representation matters involving court proceedings in connection with, in addition to, or independent of the provision of drafting services. The lawyer shall make a limited appearance on behalf of the otherwise unrepresented client by filing an Entry of Limited Appearance. This Entry of Limited Appearance cannot be filed until the otherwise unrepresented client also files a pro se appearance in the case. The Entry of Limited Appearance shall state precisely the court event to which the limited appearance pertains. A lawyer may not file an Entry of Limited Appearance for more than one court event in a civil case without leave of the court and the written consent of the client. A lawyer may not enter a limited appearance for the sole purpose of making evidentiary objections. A limited appearance also shall not allow both a lawyer and a litigant to argue at the same court event during the period of the limited appearance. (3) Termination of Limited Scope Representation. Upon completion of a limited scope representation conducted pursuant to Rule 1.2(d)(2), a lawyer shall withdraw by filing a Notice of Withdrawal of Limited Appearance in the court in which the appearance was made, with written notice to the client. No formal motion to withdraw is required As of February 22, 2022 20 and the Notice of Withdrawal of Limited Appearance when filed will be treated as a withdrawal as a matter of course when the lawyer certifies that the purpose for which the appearance was entered has been accomplished and that written notice of the withdrawal has been given to the client. The Notice of Withdrawal of Limited Appearance shall include the client's name, address, and telephone number, unless otherwise provided by law. The lawyer must file a Notice of Withdrawal of Limited Appearance for each court event for which the lawyer has filed an Entry of Limited Appearance. Such withdrawal shall be done as soon as practicable. A lawyer who seeks to withdraw before the purpose of the limited appearance has been accomplished may do so only on motion and with notice. Upon the submission of the Notice of Withdrawal of Limited Appearance in accordance with this subsection, the representation of the client is terminated in accordance with Rule 1.16(d). (4) A pleading, motion, Entry of Limited Appearance, Notice of Withdrawal of Limited Appearance, or any other document filed by a lawyer making a limited appearance under subsections 1 through 3 shall comply with the requirements of Rule 1.2(d).

Last accessed 1/28/20 here: <https://www.courts.ri.gov/publicresources/disciplinaryboard/pdf/article5.pdf>



MR 1.2: Scope of Representation & Allocation of Authority Between Client & Lawyer – Vermont

(a) and (b) Same as MR

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances, and the client gives informed consent. A lawyer who has not entered a limited appearance but who provides assistance in drafting any document that the lawyer knows or should know will be presented to a tribunal shall advise the client to comply with any rules of the tribunal regarding participation by a lawyer in support of a self-represented litigant.

(d) Same as MR

*Last accessed 11/2022

MR 1.3: Diligence

- A lawyer shall act with reasonable diligence and promptness in representing a client.
- **Maine, New Hampshire, Rhode Island and Vermont** follow MR.
- **Massachusetts** adds to end: “The lawyer should represent a client zealously within the bounds of the law.”

MR 1.6: Confidentiality of Information

Client-Lawyer Relationship

- (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).
- (b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:
 - (1) to prevent reasonably certain death or substantial bodily harm;
 - (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 compliance with these Rules;
 - (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;
 - (6) to comply with other law or a court order; or
 - (7) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.
- (c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

MR 1.6: Confidentiality of Information – Maine

- (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) Same as MR 1.6(b)(2)
 - (3) Same as MR 1.6(b)(3)
 - (4) Same as MR 1.6(b)(4) except replaces “compliance with the Rules” with “professional obligations”
 - (5) Same as MR 1.5(b)(5)
 - (6) in connection with the sale of a law practice under Rule 1.17A or to detect and resolve conflicts of interest arising from the lawyer’s change of employment or from changes in the composition or ownership of a firm. In those circumstances, a lawyer may disclose with respect to each affected client the client’s identity, the identities of any adverse parties, the nature and extent of the legal services involved, and fee and payment information, but only if the information revealed would not compromise the attorney-client privilege or otherwise prejudice any of the clients. The lawyer or lawyers receiving the information shall have the same responsibilities as the disclosing lawyer to preserve the information regardless of the outcome of the contemplated transaction; or
 - (7) Same as MR 1.6(b)(6)
- (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. Has not adopted MR 1.6(b)(7) or 1.6(c)

MR 1.6: Confidentiality of Information – Massachusetts

- Adds “confidential” before “information” throughout Rule. Defines confidential information in Comment [3A].
- Adopts MR 1.6(a) for confidential information.
- (b) A lawyer may reveal confidential information relating to the representation of a client to the extent the lawyer reasonably believes necessary, and to the extent required by Rules 3.3, 4.1(b), 8.1 or 8.3 must reveal, such information:
 - (1) Adds “or to prevent the wrongful execution or incarceration of another”
 - (2) to prevent the commission of a criminal or fraudulent act that the lawyer reasonable believes is likely to result in substantial injury to property, financial, or other significant interests of another;”
 - (3) to prevent, mitigate or rectify substantial injury to property, financial, or other significant interests 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) Same as MR 1.6(a)(4)
 - (5) Same as MR 1.6(a)(5)
 - (6) adds to beginning “to the extent permitted or required under these Rules or”
 - (7) to detect and resolve conflicts of interest arising from the lawyer’s potential change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.
- Adopts MR 1.6(c) for confidential information.
- Adds (d) A lawyer participating in a lawyer assistance program, as hereinafter defined, shall treat the person so assisted as a client for the purposes of this Rule. Lawyer assistance means assistance provided to a lawyer, judge, other legal professional, or law student by a lawyer participating in an organized nonprofit effort to provide assistance in the form of (a) counseling as to practice matters (which shall not include counseling a law student in a law school clinical program) or (b) education as to personal health matters, such as the treatment and rehabilitation from a mental, emotional or psychological disorder, alcoholism, substance abuse, or other addiction, or both. A lawyer named in an order of the Supreme Judicial Court or the Board of Bar Overseers concerning the monitoring or terms of probation of another attorney shall treat that other attorney as a client for the purposes of this Rule. Any lawyer participating in a lawyer assistance program may require a person acting under the lawyer’s supervision or control to sign a nondisclosure form approved by the Supreme Judicial Court. Nothing in this paragraph (d) shall require a bar association- sponsored ethics advisory committee, the Office of Bar Counsel, or any other governmental agency advising on questions of professional responsibility to treat persons so assisted as clients for the purpose of this Rule.

MR 1.6: Confidentiality of Information – New Hampshire

- Adopts MR 1.6(a)
- (b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:
- (b)(1): adds to end “or to prevent the client from committing a criminal act that the lawyer believes is likely to result in substantial injury to the financial interest or property of another; or
- Omits MR 1.6(b)(2) and (b)(3)
- (b)(2) – (5): same as MR (b)(4) - (7)
- Adopts MR 1.6(c).

MR 1.6: Confidentiality of Information – Rhode Island

- (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).
- (b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:
 - (1) to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm;
 - (b)(2): same as MR (b)(5)
 - (b)(3): same as MR (b)(4)
 - (b)(4): same as MR (b)(6)
- Omits MR 1.6(b)(2), MR 1.6(b)(3), MR 1.6(b)(7)
- Omits MR 1.6(c)

MR 1.6: Confidentiality of Information – Vermont

- (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is required by paragraph (b) or permitted by paragraph (c).
- (b) A lawyer must reveal information relating to the representation of a client when required by other provisions of these rules or to the extent the lawyer reasonably believes necessary: (1) to prevent the client or another person from committing a criminal act that the lawyer reasonably believes is likely to result in the death of, or substantial bodily harm to, a person other than the person committing the act; or (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; or (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.
- (c) A lawyer may reveal information relating to the representation of a client, though disclosure is not required by paragraph (b), when permitted under these rules or required by another provision of law or by court order or when the lawyer reasonably believes that disclosure is necessary: (1) to prevent the client from committing a crime in circumstances other than those in which disclosure is required by paragraph (b) or to prevent the client or another person from committing an act that the lawyer reasonably believes is likely to result in the death of, or substantial bodily harm to, the person committing the act; (c)(2) same as MR (b)(4) (c)(3) to secure guidance from bar counsel; (c)(4) same as MR (b)(5) (c)(5) to detect and resolve conflicts of interest arising from the lawyer's change or potential change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.
- (d) A lawyer shall make reasonable efforts to prevent the inadvertent disclosure of, or unauthorized access to, information relating to the representation of a client.

*Last accessed on 11/04/22

MR 1.7 Conflict of Interest: Current Clients

- *Client-Lawyer Relationship*
- (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 will be directly adverse to another client; or
 - (2) there is a significant risk that the representation of one or more clients will 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 will be able to provide competent and diligent representation to each affected client;
 - (2) the representation is not prohibited by law;
 - (3) the representation does not involve 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; and
 - (4) each affected client gives informed consent, confirmed in writing.

MR 1.7 Conflict of Interest: Current Clients - Maine

- (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.

MR 1.7 Conflict of Interest: Current Clients – Massachusetts, New Hampshire, Rhode Island and Vermont

Follow the MR.

MR 1.13: Organization as Client

- Rule 1.13: Organization as Client
- *Client-Lawyer Relationship*
- (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 that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances to the highest authority that can act on 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 or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and
 - (2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and 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) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.
- (f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.
- (g) 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

MR 1.13: Organization as Client – Maine

- (a) same as MR
- (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)(1) same as MR
- (c)(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) same as MR
- Does not have MR (e)
- (e) is MR (f)
- (f) is MR (g)
- Adds new (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.

MR 1.13: Organization as Client – Massachusetts, New Hampshire and Rhode Island

- Same as MR

MR 1.13: Organization as Client – Vermont

- (a) same as MR
- (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 reasonably certain to result in harm that would require a disclosure of information relating to the representation under Rule 1.6(b), or that is 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, then the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law, unless the lawyer reasonably believes that (1) a disclosure required by Rule 1.6(b) is necessary to prevent harm pursuant to that rule before a referral can be made or acted upon; (2) a referral is otherwise not feasible in the circumstances, considering the best interests of the organization; or (3) a referral is not necessary in the best interests of the organization.
- (c) Except as provided in paragraph (d), if, despite the lawyer's efforts in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is reasonably certain to result in harm that would require a disclosure of information relating to the representation under Rule 1.6(b) or is clearly a violation of law and is likely to result in substantial injury to the organization, and (1) the lawyer reasonably believes that the action or refusal to act is reasonably certain to result in harm that would require a disclosure under Rule 1.6(b), then the lawyer must reveal the information, but only if and to the extent the lawyer reasonably believes necessary to prevent the harm; or (2) the lawyer reasonably believes that the action or refusal to act is a violation of law that is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 requires or permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.
- (d) Except for disclosures required by Rule 1.6(b), 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) same as MR
- (f) same as MR

Model 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 and political factors, that may be relevant to the client's situation.

MR 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 and political factors, that may be relevant to the client's situation.

- Maine, Massachusetts, New Hampshire, Rhode Island and Vermont all follow the Model Rule

MR 4.1: Truthfulness in Statements to Others

- Rule 4.1: Truthfulness in Statements to Others
- *Transactions With Persons Other Than Clients*
- 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.

MR 4.1: Truthfulness in Statements to Others

- **Maine, Massachusetts and New Hampshire**

- Same as Model Rule

- **Rhode Island**

- (a) Same as MR
- (b) adds “to a third person” after “material fact”

- **Vermont**

- Does not have MR (b)

MR 4.3: Dealing with Unrepresented Person

Transactions With Persons Other Than Clients

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, other than the advice to 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.

MR 4.3: Dealing with Unrepresented Person

- **Maine, Massachusetts, New Hampshire, Vermont:**

- Same as MR

- **Rhode Island:**

- 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, other than the advice to 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. An otherwise unrepresented client for whom an Entry of Limited Appearance has been filed pursuant to Rule 1.2 is considered to be unrepresented for purposes of this Rule unless the opposing lawyer has been served with notice of the limited appearance, or the opposing lawyer is otherwise notified that an Entry of Limited Appearance has been filed or will be filed. In such instance, the otherwise unrepresented client is considered to be unrepresented only with regard to matters outside the scope of the limited appearance.

MR 5.1: RESPONSIBILITIES OF PARTNERS, MANAGERS, AND SUPERVISORY LAWYERS

Law Firms and Associations

- (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) (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
- (c) 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.

MR 5.1: RESPONSIBILITIES OF PARTNERS, MANAGERS, AND SUPERVISORY LAWYERS

- Maine, Massachusetts, Rhode Island and Vermont all follow the MR.
- New Hampshire: Same as MR but changes “a lawyer” to “each lawyer” throughout

MR 8.3: Reporting Professional Misconduct

Maintaining The Integrity of The Profession

- (a) A lawyer who knows that another lawyer has committed a violation of the 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.
- (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 authority.
- (c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while participating in an approved lawyers assistance program.

MR 8.3: Reporting Professional Misconduct – Maine

(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. (b) Same as MR (c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while participating in the Maine Assistance Program for Lawyers, or an equivalent peer assistance program approved by a state's highest court.

MR 8.3: Reporting Professional Misconduct – Massachusetts

- (a) A lawyer who knows that another lawyer has committed a violation of the 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 Bar Counsel's office of the Board of Bar Overseers.
- (b) (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 Commission on Judicial Conduct. As of December 2021
- (c) (c) This Rule does not require disclosure of information otherwise protected by Rule 1.6.

MR 8.3: Reporting Professional Misconduct – New Hampshire

- (a) Same as MR
- (b) (b) Same as MR
- (c) (c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information received by lawyers during the course of their work on behalf of the New Hampshire Bar Association Ethics Committee or the New Hampshire Lawyers Assistance Program.

MR 8.3: Reporting Professional Misconduct – Rhode Island

(a) and (b) Same as MR

(c) This rule does not require disclosure of information otherwise protected by Rule 1.6.

(d) This rule shall not apply to members of the Confidential Assistance Committee ("the committee") of the Rhode Island Bar Association ("the Association") regarding information received in their capacity as Committee members, acting in good faith, unless it appears to the members that the attorney in question is failing to desist from the violation or is failing to cooperate with a program of assistance to which the attorney has agreed, or is engaged in the perpetration of fraud or embezzlement, or when disclosure is required to protect the public from substantial harm.

(e) Except as provided by the preceding subsection (d), no information received, gathered or maintained by the Committee, or by an employee of the Association in connection with the work of the Committee, may be disclosed to any person or be subject to discovery or subpoena in any administrative or judicial proceeding, except upon the express written release of the subject attorney, or by order of a court of competent jurisdiction. However, the Committee may refer any attorney to a professional assistance entity, and may, in good faith, communicate information to the entity in connection with the referral. If information obtained by a member of the Committee or an employee of the Association gives rise to reasonable suspicion of a direct threat to the health or safety of the subject attorney or other person, then the obligation of confidentiality set forth in this subsection (e) shall not apply, and the Committee member or Association employee may make such communications as are necessary for the purpose of avoiding or preventing the threat.

(f) Members of the Committee shall be immune from civil liability for actions taken in good faith in the course of performing their duties.

MR 8.3: Reporting Professional Misconduct – Vermont

(a) and (b) Same as MR

(c) This rule does not require disclosure of information gained by Bar Counsel in responding to an inquiry or by a lawyer while participating in a lawyer assistance program approved by the Vermont Bar Association or as a member of the Professional Responsibility Committee of the Vermont Bar Association or of information otherwise protected by Rule 1.6.