

## **Changes to the Professional Conduct Rules in the Works**

**by**  
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The Minnesota State Bar Association (MSBA) Task Force on the Model Rules of Professional Conduct is winding up its review of the recently amended American Bar Association (ABA) Model Rules of Professional Conduct.

It is anticipated that the task force will be submitting a report and recommendation for changes to the Minnesota Rules of Professional Conduct (MRPC) to the MSBA at the organization's annual convention in June. The end result will be a petition by the MSBA and the Lawyers Professional Responsibility Board to the Minnesota Supreme Court for amendment of the MRPC.

Here's a little background. The MRPC, adopted in 1985, are based on the ABA Model Rules of Professional Conduct. On Feb. 5, 2002, the ABA, after three years of public hearings and review, added some new rules and adopted amendments to many of the existing rules.

Last year the MSBA formed the Task Force on the Model Rules of Professional Conduct to review the changes to the model rules and recommend which of those changes ought to be adopted in Minnesota.

The task force has worked hard on this project, sought outside input and is currently finalizing its report. The work product of the task force can be found at [www2.mnbar.org/committees/task-force-aba-rules/index.htm](http://www2.mnbar.org/committees/task-force-aba-rules/index.htm).

Space does not permit a complete review of the proposed changes here. Many of the changes are noncontroversial and do little to alter the substance of the current rules.

Some are more substantive, however. Rule 1.6, dealing with confidentiality of client information, is being substantially reworked. The task force is recommending that Minnesota adopt the model rule format that defines the universe of information subject to the rule as any "information relating to the representation of a client."

Currently, the MRPC defines the universe of information subject to the rule more narrowly as information that is either a confidence or secret. Confidence is defined as information protected by the

attorney-client privilege and secret is defined as information that the client has either asked not be disclosed or would be embarrassing or likely detrimental to the client if disclosed.

While adopting the ABA's broader definition of confidential information, the task force recommends reincorporating the confidences and secrets concept as one of the listed exceptions to the general rule.

The task force is also recommending a more expansive listing of the exceptions to the general rule of confidentiality. While the list of 10 permissive exceptions may seem, at first glance, to be quite broad, most already exist or are codifications of current practice.

Two of them, based upon the ABA model rule, are new to Minnesota. They would permit disclosure where the lawyer reasonably believes it necessary to prevent reasonably certain death or great bodily harm and where necessary for the lawyer to secure legal advice regarding his or her compliance with the rules.

The task force is also recommending changes to Rule 3.3 regarding candor to the tribunal. The changes would clarify that the remedial measures a lawyer must take if he or she comes to know that evidence they have submitted is false include, if necessary, disclosure to the tribunal.

The recommended changes also include the language, "A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false." The clause "other than the testimony of a defendant in a criminal matter" is new to the rule.

Amendments to Rules 1.5, 1.15 and 1.16 are proposed to incorporate language from LPRB Opinions 9, 12, 13, and 15. These deal with the required trust account books and records, return of client files, the requirement of a written fee agreement where a nonrefundable retainer is paid, and the deposit of advance fee payments to a trust account.

The task force is proposing the adoption of a new rule, Rule 1.18, dealing with conflicts of interest and confidentiality issues arising out of meetings with prospective clients who do not ultimately retain the attorney with whom they met.

Amendments to Rule 5.5, regarding multijurisdictional practice and the unauthorized practice of law are also proposed. These amendments are intended to address the issues of when lawyers who are not licensed in Minnesota may participate in matters that involve, at least in part, proceedings in Minnesota.

In many ways the rules of professional conduct establish the ground rules for how lawyers conduct their practices. The changes to the rules are important. It is well worth your time to review the proposed amendments. The task force will meet one final time on June 9 and the amendments will be considered at the convention. If you have comments on the proposed rule changes, now is a good time to be heard.