

STATE OF MAINE
SUPREME JUDICIAL COURT
AMENDMENTS TO
MAINE RULES OF PROFESSIONAL CONDUCT

2012 Me. Rules 06

Effective: January 1, 2012

All the justices concurring therein, the following amendments to the Maine Rules of Professional Conduct are hereby adopted to be effective on the date indicated above. The specific rules amendments are stated below. To aid in understanding of the amendments, an Advisory Note appears after the text of each amendment. The Advisory Note states the reason for recommending each amendment, but it is not part of the amendment adopted by the Court.

1. Rule 1.15(f) of the Maine Rules of Professional Conduct is amended as follows:

(f) Upon termination of representation, a lawyer ~~or a lawyers successor,~~ 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 ~~is~~ 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version, such as original signed documents, which must be retained and safeguarded until such time as they are out of date and no longer of consequence.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.

Advisory Note – November 2011

The deleted phrase clarifies that Rule 1.15(f) pertains to an attorney's responsibilities to a former client when the attorney-client relationship ends. In circumstances when a proxy is appointed, M. Bar R. 7.3(f) governs.

2. Rule 1.16(d) of the Maine Rules of Professional Conduct is amended as follows:

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, ~~such as including giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fees or expenses 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.~~ The lawyer may retain papers relating to the client to the extent permitted by other law.

Advisory Note – November 2011

The changes to Rule 1.16(d) render it consistent with Rule 1.15(f), as both rules apply to an attorney's responsibilities when the attorney-client relationship terminates. The changes to Rule 1.16(d) invite the attorney to consult Rule 1.15(f) concerning the disposition and retention of information and data in the lawyer's possession to which the client is entitled.

3. Rule 3.1 of the Maine Rules of Professional Conduct is amended as follows:

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.

Advisory Note – November 2011

This Amendment addresses a transitional issue from the former Bar Rules to the Maine Rules of Professional Conduct. Former Maine Bar Rule 3.6(c) proscribed threatening prosecution: “A lawyer shall not present, or threaten to present, criminal, administrative, or disciplinary charges solely to obtain an advantage in a civil matter.” The ABA Model Rules of Professional Conduct do not directly prohibit this conduct. ABA Formal Ethics Opinions 92-363 and 94-383 suggest the conduct is addressed by Model Rules 3.1 and 4.1(a) & (b). The omission of explicit language in the Maine Rules of Professional Conduct by the Ethics 2000 Task Force was not to be read as condoning the previously proscribed conduct. This addition of subsection (b) gives expression to the continuing prohibition. The rule as promulgated clarifies that prosecutors may engage in good faith negotiations to resolve multiple related matters.

4. These amendments shall be effective January 1, 2012.

Dated: December 13, 2011

FOR THE COURT¹

/S/

LEIGH I. SAUFLEY
Chief Justice

DONALD G. ALEXANDER
JON D. LEVY
WARREN M. SILVER
ANDREW M. MEAD
ELLEN A. GORMAN
JOSEPH M. JABAR
Associate Justices

¹ This Rules Amendment Order is approved after conference of the Court, all Justices concurring therein.