

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

2018 Me. Rules 18

Effective: October 26, 2018

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

1. An Advisory Committee Note is added to Rule 1.7 of the Maine Rules of Professional Conduct as follows:

Advisory Note to Rule 1.7 – October 2018

Rule 1.8(j) has been adopted, and therefore Comment [12] to this Rule is no longer correct in stating that “Maine has not adopted the ABA Model Rules’ categorical prohibition on an attorney forming a sexual relationship with an existing client.” See Rule 1.8(j) and Advisory Committee Note thereto of even date. Rule 1.7 has not been amended in any way on this date.

2. Rule 1.8(j) of the Maine Rules of Professional Conduct is amended to read as follows.

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

....

(j) ~~{Reserved}~~ A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.

Advisory Committee Note – October 2018

The Committee recommends adopting ABA Model Rule 1.8(j)'s prohibition on sexual relations with clients. When Maine adopted the Rules of Professional Conduct, the Task Force (over a minority dissent) recommended not adopting Rule 1.8(j). The Task Force noted in Comment [12] to Rule 1.7 (the general current conflict rule), that it was not “implicit[ly] approv[ing]” of sexual relationships with clients, and expressly noted that attorneys had been disciplined under the former Code of Professional Responsibility for entering into sexual relationships with clients and “may be disciplined for similar conduct under these rules” even without the adoption of Rule 1.8(j). Feedback from the bar in the years since has helped convince the Committee that adopting Rule 1.8(j) will be helpful to the bar and the public in understanding the nature of an attorney's obligations in this regard.

Rule 1.8(j) states a *per se* prohibition on sexual relationships formed with a client during the course of representation, but it does not exhaust the field of sexual relationships or sexual conduct that can give rise to discipline. It remains true that a sexual relationship with a client potentially implicates other duties under these rules (e.g. the duty to avoid conflicts that materially limit the representation, avoiding personal-interest conflicts in representing a client, duty to apply the disinterested-lawyer test to determine whether consent can cure a conflict, to name a few) and may be cause for discipline independent of Rule 1.8(j). Accordingly, although there is no universal prohibition on entering into representation of a spouse or other sexual partner, such a representation may be prohibited in individual cases under standard conflict rules, and the lawyer must be vigilant about the potential for conflict such a relationship can pose, as in any other case of potential conflict. And conduct that arguably is not formation of a sexual relationship with an existing client may nonetheless be abusive or improper in a way that would warrant discipline under other rules (e.g. prejudice to the administration of justice, unlawfulness, harassment).

Dated October 26, 2018

FOR THE COURT,*

_____/s/_____
LEIGH I. SAUFLEY
Chief Justice

DONALD G. ALEXANDER
ANDREW M. MEAD
ELLEN A. GORMAN
JOSEPH M. JABAR
JEFFREY L. HJELM
THOMAS E. HUMPHREY
Associate Justices

* This Rule Amendment Order was approved after conference of the Court, all Justices concurring therein.