

Colo. R. Prof'l. Cond. 4.3

Rule 4.3 - Dealing with Unrepresented Person

In dealing on behalf of a client with a person who is not represented by counsel or an LLP, 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 or an LLP, 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.

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Comment amended and adopted June 17, 1999, effective 7/1/1999; entire Appendix repealed and readopted April 12, 2007, effective 1/1/2008; amended and adopted by the Court, En Banc, effective 11/16/2023.

COMMENT

[1] An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even when the lawyer represents a client. In order to avoid a misunderstanding, a lawyer will typically need to identify the lawyer's client and, where necessary, explain that the client has interests opposed to those of the unrepresented person. For misunderstandings that sometimes arise when a lawyer for an organization deals with an unrepresented constituent, see Rule 1.13(f).

[2] The Rule distinguishes between situations involving unrepresented persons whose interests may be adverse to those of the lawyer's client and those in which the person's interests are not in conflict with the client's. In the former situation, the possibility that the lawyer will compromise the unrepresented person's interests is so great that the Rule prohibits the giving of any advice, apart from the advice to obtain counsel. Whether a lawyer is giving impermissible advice may depend on the experience and sophistication of the unrepresented person, as well as the setting in which the behavior and comments occur. This Rule does not prohibit a lawyer from negotiating the terms of a transaction or settling a dispute with an unrepresented person. So long as the lawyer has explained that the lawyer represents an adverse party and is not representing the person, the lawyer may inform the person of the terms on which the lawyer's client will enter into an agreement or settle a matter, prepare documents that require the person's signature and explain the lawyer's own view of the meaning of the document or the lawyer's view of the underlying legal obligations.

[2A] The lawyer must comply with the requirements of this Rule for pro se parties to whom limited representation has been provided, in accordance with C.R.C.P. 11(b), C.R.C.P. 311(b), Rule 1.2, and Rule 4.2. Such parties are considered to be unrepresented for purposes of this Rule.

ANNOTATION Law reviews. For article, "Discrete Task Representation a/k/a Unbundled Legal Services", see 29 Colo. Law. 5 (January 2000). For article, "The New Rules of Professional Conduct: Significant Changes for In-House Counsel", see 36 Colo. Law. 71 (November 2007). Annotator's note. Rule 4.3 is similar to Rule 4.3 as it existed prior to the 2007 repeal and re adoption of the Colorado rules of professional conduct. Relevant cases construing that provision have been included in the annotations to this rule. A noble motive does not justify departure from any rule of professional conduct. A prosecutor trying to protect public safety is not immune from the code of professional conduct

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when he or she chooses deception as means for protecting public safety. In re Pautler, 47 P.3d 1175 (Colo. 2002). There is no imminent public harm, duress, or choice of evils exception or defense for a prosecutor to the rules of professional conduct. In re Pautler, 47 P.3d 1175 (Colo. 2002). Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. In re Meyers, 981 P.2d 143 (Colo. 1999).

