

**RULE 4.3**  
**DEALING WITH UNREPRESENTED PERSON**

**Executive Summary**

Proposed New York Rule 4.3 (“Dealing with Unrepresented Person”) regulates the dealings of lawyers with persons who are not represented by counsel. A lawyer is forbidden from stating or implying that the lawyer is disinterested when acting on behalf of a client, is required to correct any known or reasonably knowable misperception by an unrepresented person that the lawyer is disinterested and is barred from offering legal advice to an unrepresented person whose interests are or have a reasonable possible of being in conflict with those of the lawyer’s client.

**Text of Proposed Rule with COSAC Explanation**

<b>RULE 4.3 DEALING WITH UNREPRESENTED PERSONS</b>	<b>COSAC COMMENTARY</b>
<p>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.</p>	<p>Proposed Rule 4.3 is identical to the ABA Model Rule. It regulates a lawyer’s dealings with unrepresented “persons” and is more explicit with regard to both what a lawyer <i>must</i> and <i>may not</i> say than the current New York rule, DR 7-104 (A)(2), which provides only that a lawyer shall not “[g]ive advice to a party who is not represented by a lawyer, other than the advice to secure counsel.”</p> <p>COSAC reasoned that (1) the use of the term “person” was more consistent with the purpose of the rule than the use of the more limited term “party” and (2) the more explicit guidance provided ABA Model Rule would be helpful in preventing the misunderstanding of the lawyer’s role.</p>

**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); see also Rule 3.4(f) (prohibiting lawyer from asking a person other than a client to refrain from voluntarily giving relevant information to the other party, unless that person is a relative, employee or other agent of a client and the lawyer believes that the person's interests will not be adversely affected by complying with request).

[2] The Rule distinguishes between situations involving unrepresented parties 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 party, 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.

**COSAC COMMENTARY**

Comment [1] is unchanged from the ABA version, except that it adds an explanatory cross-reference to Rule 3.4(f) in the final sentence.

Comment [2] is unchanged from the ABA version.

### **Changes from Existing New York Code**

Proposed Rule 4.3 covers a lawyer's dealings with unrepresented "persons," rather than adopting the narrower scope of DR 7-104(A)(2), which pertains to unrepresented "parties."

The Proposed Rule more explicit guidance than DR 7-104(A)(2), which only prohibits a lawyer from "[g]iv[ing] advice to a party who is not represented by a lawyer, other than the advice to secure counsel."

### **Reporter's Notes**

In the course of representing a client, a lawyer may need to speak, negotiate or otherwise communicate with persons who are not represented by counsel. Because an unrepresented person, particularly one who is not experienced in legal matters, might assume that a lawyer is disinterested even when the lawyer represents a client, Rule 4.3 attempts to insure that unrepresented persons are not misled about the lawyer's role in the matter or unduly influenced into taking action based on a misunderstanding of the lawyer's role.

### **Corresponding New York Disciplinary Rules**

#### **DR 7-104 Communicating With Represented And Unrepresented Parties**

(A) During the course of the representation of a client a lawyer shall not:

....

(2) Give advice to a person party who is not represented by a lawyer, other than the advice to secure counsel, if the interests of such person party are or have a reasonable possibility of being in conflict with the interests of the lawyer's client.