

**Rule 4.3 Communicating with an Unrepresented Person
(Commission's Proposed Rule Adopted on October 21–22, 2016 – Clean Version)**

- (a) In communicating 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* incorrectly believes the lawyer is disinterested in the matter, the lawyer shall make reasonable* efforts to correct the misunderstanding. If the lawyer knows* or reasonably should know* that the interests of the unrepresented person* are in conflict with the interests of the client, the lawyer shall not give legal advice to that person,* except that the lawyer may, but is not required to, advise the person* to secure counsel.
- (b) In communicating on behalf of a client with a person* who is not represented by counsel, a lawyer shall not seek to obtain privileged or other confidential information the lawyer knows* or reasonably should know* the person* may not reveal without violating a duty to another or which the lawyer is not otherwise entitled to receive.

Comment

[1] This Rule is intended to protect unrepresented persons,* whatever their interests, from being misled when communicating with a lawyer who is acting for a client.

[2] Paragraph (a) distinguishes between situations in which a lawyer knows* or reasonably should know* that the interests of an unrepresented person* are in conflict with the interests of the lawyer's client and situations in which the lawyer does not. 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 legal advice, apart from the advice to obtain counsel. A lawyer does not give legal advice merely by stating a legal position on behalf of the lawyer's client. 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 discloses that the lawyer represents an adverse party and not the person,* the lawyer may inform the person* of the terms on which the lawyer's client will enter into the agreement or settle the matter, prepare documents that require the person's signature, and explain the lawyer's own view of the meaning of the document and the underlying legal obligations.

[3] Regarding a lawyer's involvement in lawful covert activity in the investigation of violations of law, see Rule 8.4, Comment [5].

Proposed Rule 4.3 Communication with an Unrepresented Person
Synopsis of Public Comments

TOTAL = 2 **A = 1**
 D = 0
 M = 1
 NI = 0

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI ¹	Rule Section or Cmt.	Comment	RRC Response
Y-2016-21z	State Bar Office of Chief Trial Counsel (OCTC) (Dresser) (01-09-17)	Yes	M		<p>1. OCTC supports this rule.</p> <p>2. Comments [1] and [2] are unnecessary, merely repeat the rule, or provide the philosophical reasons for the rule. Comment [3] is unnecessary, as this subject is covered in Rule 8.4.</p> <p>3. Comment [3] is unnecessary, as this subject is covered in Rule 4.4.</p>	<p>1. No response required.</p> <p>2. The Commission continues to believe that Comments [1] and [2] provide important guidance with respect to the application of the Rule.</p> <p>3. The Commission continues to believe it is important to have a cross-reference to provide guidance with respect to a situation in which all the requirements of the Rule will not apply.</p>
Y-2016-7i	State Bar Standing Committee on Professional Responsibility and Conduct (COPRAC) (Spencer) (12-20-16)	Yes	A		<p>We reiterate our support for proposed Rule 4.3 and the proposed Comments.</p> <p>We have concluded that none of the public comments cause us to reconsider our support. Your Commission's responses to those comments should dispel the concerns raised, particularly with the addition of Comment [3].</p>	No response required.

¹ A = AGREE with proposed Rule

D = DISAGREE with proposed Rule

M = AGREE ONLY IF MODIFIED

NI = NOT INDICATED

