

**Vermont Rules of Professional Conduct**  
**Rule 4.3 – Dealing With Unrepresented Person**

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*Kennedy's Highlights*

*(NOT a substitute for full research of the rule & opinions/decisions on it)*

- Rule 4.3 was last amended in 2009

**Rule 4.3. Dealing With Unrepresented Person.**

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.

**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(d).

[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.

**Reporter's Notes — 2009 Amendment**

V.R.P.C. 4.3 is amended to conform to the changes in Model Rule 4.3. The ABA Reporter's Explanation is as follows:

TEXT:

1. Add prohibition on giving legal advice to unrepresented persons

Under the ABA Model Code of Professional Responsibility, DR 7-104(A)(2), a lawyer was prohibited from giving advice to an unrepresented person, other than the advice to secure counsel. This statement [was carried

forward in the original] Comment to Model Rule 4.3. Although the cases generally perceive no change of substance in the Rule, it has been reported that, in negotiations between lawyers and unrepresented parties, the giving of legal advice (often misleading or overreaching) is not uncommon. Of the jurisdictions that have adopted the Model Rules, 11 have included a textual provision similar to the prohibition on giving legal advice in the Model Code.

The reason for the initial decision to delete the Model Code prohibition from text was the difficulty of determining what constitutes impermissible advice-giving. The Commission recommends that language be included in the Comment that addresses the application of the textual prohibition in some common situations. Although the line may be difficult to draw, it is important to discourage lawyers from overreaching in their negotiations with unrepresented persons.

2. Limit prohibition on advice-giving to situations where unrepresented person's interests may be in conflict with client

Following the practice of the majority of states that have adopted a textual prohibition on advice-giving, the Commission recommends restricting the prohibition to situations where the lawyer knows or has reason to know that the unrepresented person's interests "are or have a reasonable possibility of being in conflict with the interests of the client."

COMMENT:

[1] The Commission is proposing three changes in this paragraph. First, a sentence has been added to indicate that, in order to avoid misunderstandings, 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. The second is the deletion of the general statement on advice-giving, in recognition that a similar statement now appears in the text. Finally, a cross-reference to Rule 1.13(d) has been added.

[2] A second Comment has been added to give guidance on what constitutes impermissible advicegiving. It first explains the rationale for limiting the prohibition to persons whose interests may be in conflict with the client's. It then attempts to distinguish between the permitted supplying of information and the impermissible giving of legal advice in negotiations and settlement discussions.

### **Reporter's Notes**

This rule takes a somewhat different approach than does the Vermont Code. Instead of simply prohibiting the giving of substantive advice to unrepresented persons, the rule requires the lawyer to make clear to an unrepresented person that the lawyer is acting on behalf of a client, when the lawyer has reason to know the unrepresented person misunderstands the lawyer's role.

There is no direct counterpart to this rule in the Vermont Code. DR 7-104(A)(2) provided that a lawyer shall not "[g]ive advice to a person who is not represented by a lawyer, other than the advice to secure counsel."