

DEALING WITH PERSON NOT REPRESENTED BY A LAWYER

In dealing on behalf of a client with a person who is not represented by a lawyer, 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 the services of another legal practitioner, 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.

[Adopted effective September 1, 1985; Amended effective October 29, 2002; September 1, 2006; April 14, 2015.]

Comments

[1] **[Washington revision]** 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). For the definition of "unrepresented person" under this Rule, see Washington Comment [5].

[Comment 1 adopted effective September 1, 2006; Amended effective April 14, 2015.]

[2] **[Washington revision]** 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 the services of another legal practitioner. 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. For special considerations that may arise when a lawyer deals with a person who is assisted by an LLLT, see RPC 4.4 Comment [5].

[Comment 2 amended effective April 14, 2015.]

Additional Washington Comments (3-6)

[3] An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this Rule unless the opposing lawyer knows of, or has been provided with, a written notice of appearance under which, or a written notice of time period during which, they are to communicate only with the limited representation lawyer as to the subject matter within the limited scope of the representation. (The provisions of this Comment were taken from former Washington RPC 4.3(b)).

[4] Government lawyers are frequently called upon by unrepresented persons, and in some instances by the courts, to provide general information on laws and procedures relating to claims

against the government. The provision of such general information by government lawyers is not a violation of this Rule.

[Comment 4 adopted effective September 1, 2006.]

[5] For purposes of this Rule, a person who is assisted by an LLLT is not represented by a lawyer and is an unrepresented person. See APR 28.

[Comment 5 adopted effective April 14, 2015; Amended effective June 4, 2019.]

[6] When a lawyer communicates with an LLLT who represents an opposing party about the subject of the representation, the lawyer should be guided by an understanding of the limitations imposed on the LLLT by APR 28, related regulations and the LLLT RPC. The lawyer should further take care not to overreach or intrude into privileged information. APR 28(K)(3) (“The Washington law of attorney-client privilege and law of a lawyer’s fiduciary responsibility to the client shall apply to the Limited License Legal Technician-client relationship to the same extent as it would apply to an attorney-client relationship.”).

[Comment 6 adopted effective April 14, 2015; Amended effective June 4, 2019.]