

LEWIS KINARD, CHAIR
TIMOTHY D. BELTON
AMY BRESNEN
SCOTT BRUMLEY
ROBERT DENBY



CLAUDE DUCLOUX
HON. PHYLLIS GONZALEZ
VINCENT JOHNSON
KAREN NICHOLSON

August 9, 2023

Ms. Kennon Wooten, Chair
State Bar of Texas Board of Directors
[REDACTED]

RE: Submission of Proposed Rule Recommendations – Rule 4.03, Texas Disciplinary Rules of Professional Conduct

Dear Ms. Wooten:

Pursuant to Section 81.0875 of the Texas Government Code, the Committee on Disciplinary Rules and Referenda initiated the rule proposal process for proposed Rule 4.03, Texas Disciplinary Rules of Professional Conduct, relating to Dealing With Unrepresented Persons. The Committee published the proposed rule in the *Texas Bar Journal* and the *Texas Register*. The Committee solicited public comments and held a public hearing on the proposed rule. At its August 2, 2023, meeting, the Committee voted to recommend the proposed rule to the Board of Directors.

Included in this submission packet, you will find the proposed rule recommended by the Committee, as well as other supporting materials. Section 81.0877 of the Government Code provides that the Board is to vote on each proposed disciplinary rule recommended by the Committee not later than the 120th day after the date the rule is received from the Committee. The Board can vote for or against a proposed rule or return a proposed rule to the Committee for additional consideration.

As a reminder, if a majority of the Board approves a proposed rule, the Board shall petition the Supreme Court of Texas to order a referendum on the proposed rule as provided by Section 81.0878 of the Government Code.

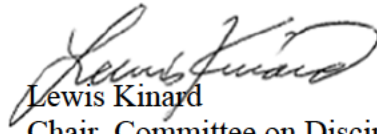
As always, thank you for your attention to this matter and for your service to the State Bar. Should the Board require any other information, please do not hesitate to contact me.

Committee on Disciplinary Rules and Referenda
P.O. Box 12487, Austin, TX 78711

cdr@texasbar.com

www.texasbar.com/cdr

Sincerely,

A handwritten signature in black ink, appearing to read "Lewis Kinard", written in a cursive style.

Lewis Kinard
Chair, Committee on Disciplinary Rules and
Referenda

cc: Cindy V. Tisdale: [REDACTED]
Steve Benesh: [REDACTED]
Laura Gibson: [REDACTED]
Trey Apffel
Ray Cantu
KaLyn Laney
Seana Willing
Chris Ritter
Ross Fischer

Committee on Disciplinary Rules and Referenda

Overview of Proposed Rule

Texas Disciplinary Rules of Professional Conduct

Rule 4.03. Dealing With Unrepresented Persons

Provided here is a summary of the actions and rationale of the Committee on Disciplinary Rules and Referenda (Committee) related to proposed Rule 4.03 of the Texas Disciplinary Rules of Professional Conduct (TDRPC), relating to Dealing With Unrepresented Persons. The Committee initiated the rule proposal process on February 1, 2023.

Actions by the Committee

- **Initiation** – The Committee voted to initiate the rule proposal process at its February 1, 2023, meeting.
- **Publication** – The proposed rule was published in the April 2023 issue of the *Texas Bar Journal* and the April 7, 2023, issue of the *Texas Register*. The proposed rule was concurrently posted on the Committee’s website. Information about the public hearing and the submission of public comments was included in the publications and on the Committee’s website.
- **Additional Outreach** – Email notifications regarding the proposed rule were sent to all Texas lawyers (other than those who have voluntarily opted out of receiving email notices), Committee email subscribers, and other potentially interested parties on April 25, 2023, and May 8, 2023. An additional email notification was sent to Committee email subscribers on June 2, 2023.
- **Public Comments** – The Committee accepted public comments through June 8, 2023. The Committee received written public comments on the proposed rule from twelve individuals.
- **Public Hearing** – On June 7, 2023, the Committee held a public hearing by Zoom teleconference. Four individuals addressed the Committee at the public hearing.
- **Recommendation** – The Committee voted at its August 2, 2023, meeting to recommend the proposed rule, as published, to the Board of Directors.

Overview

Proposed Rule 4.03, TDRPC, would prohibit a lawyer from giving 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. The proposed amendment would add this express prohibition to Rule 4.03, which currently prohibits a lawyer from stating or implying that the lawyer is disinterested and imposes a duty on the lawyer to make reasonable efforts to correct any misunderstanding about the lawyer’s role when dealing on behalf of a client with a person who is not represented by counsel.

In developing its recommendation, the Committee has reviewed and considered current Rule 4.03, American Bar Association (ABA) Model Rule 4.3, and a direct comparison of ABA Model Rule 4.3 with current Rule 4.03. Additionally, the Committee recommends interpretive comments to proposed Rule 4.03.¹

Additional Documents

Included in the pages that follow this Overview of Proposed Rule are: 1) proposed Rule 4.03, as published in the April 2023 *Texas Bar Journal* (Bates Number 000005); 2) proposed Rule 4.03, as published in the April 7, 2023, issue of the *Texas Register* (Bates Numbers 000006 – 000008); 3) public comments received in response to the publications (Bates Numbers 000009 – 000030); 4) the link to the video recording of the Committee’s public hearing on proposed Rule 4.03 conducted by Zoom teleconference on June 7, 2023,² with the names of the speakers and time-stamp of the speaker’s oral comments (Bates Number 000031); and 5) background information compiled by Committee Member Vincent R. Johnson, including current Rule 4.03, ABA Model Rule 4.3, a comparison of ABA Model Rule 4.3 with current Rule 4.03, and proposed Rule 4.03 (Bates Numbers 000032 – 000035).

¹ Interpretive comments are promulgated by the Supreme Court of Texas and are not subject to the rule proposal process set out in Subchapter E-1, Chapter 81, Texas Government Code.

² The Committee also heard public comments on proposed Rules 4.04 and 8.06, TDRPC, on June 7, 2023.

COMMITTEE ON DISCIPLINARY RULES AND REFERENDA PROPOSED RULE CHANGES

Rule 4.03. Dealing With Unrepresented Persons

The Committee on Disciplinary Rules and Referenda, or CDRR, was created by Government Code section 81.0872 and is responsible for overseeing the initial process for proposing a disciplinary rule. Pursuant to Government Code section 81.0876, the committee publishes the following proposed rule. The committee will accept comments concerning the proposed rule through June 8, 2023. Comments can be submitted at texasbar.com/CDRR or by email to cdrr@texasbar.com. The committee will hold a public hearing on the proposed rule by teleconference on June 7, 2023, at 10 a.m. CDT. For teleconference participation information, please go to texasbar.com/cdrr/participate.

Proposed Rule (Redline Version)

Rule 4.03. Dealing With Unrepresented Persons

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. During the course of a lawyer's representation of a client, the lawyer should not give advice to an unrepresented person other than the advice to obtain counsel. With regard to the special responsibilities of a prosecutor, see Rule 3.09.

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.

Proposed Rule (Clean Version)

Rule 4.03. Dealing With Unrepresented Persons

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:

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IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Animal Health Commission

Executive Director Order Declaring Quarantine for the State of Pennsylvania Due to Highly Pathogenic Avian Influenza

The Texas Animal Health Commission (the "Commission") is authorized to establish a quarantine against all or a portion of a state in which an animal disease exists to protect livestock, exotic livestock, domestic fowl, and exotic fowl in this state from the disease.

Pursuant to Texas Agriculture Code §161.054, the Commission by rule may regulate the movement of animals and may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate commerce. Under Texas Agriculture Code §161.061, the Commission may establish a quarantine against a state to protect livestock, exotic livestock, domestic fowl, and exotic fowl from diseases the Commission determines require control or eradication under the Commission's disease control authority under Texas Agriculture Code §161.041.

As specified in Title 4, Texas Administrative Code §45.3, the Commission is required to protect all livestock, exotic livestock, domestic fowl, and exotic fowl from avian influenza. Under Title 4, Texas Administrative Code §51.5, if the Executive Director of the Commission determines that avian influenza exists in another state and deems it necessary to protect livestock in this state, the Executive Director may establish a quarantine against all of the state. A quarantine established by the Executive Director will be acted on by the Commission at the next appropriate meeting.

Highly Pathogenic Avian Influenza (HPAI) is an influenza virus that may cause illness and death in domestic poultry, fowl, and birds. HPAI is extremely infectious, and can spread rapidly from flock to flock and is often fatal to chickens. In domestic poultry HPAI can cause morbidity and mortality rates between 90-100 percent, leading to detrimental economic consequences.

HPAI can spread easily through airborne transmission or indirectly through contaminated material. Due to the highly contagious nature of HPAI, rapid response to outbreaks is required. Movement control of animals, animal products, and other potentially contaminated materials is critical to prevent transmission of HPAI.

Currently, Pennsylvania is facing a widespread outbreak of HPAI. The Pennsylvania Department of Agriculture and the United States Department of Agriculture are actively working to control the outbreak of HPAI in Pennsylvania. Despite the measures taken in that state, the incidents of HPAI are increasing in Pennsylvania.

The Executive Director of the Commission finds that the widespread outbreak of HPAI in Pennsylvania creates a high probability that domestic poultry and birds in Pennsylvania will have, develop, or be exposed to HPAI.

The Executive Director further finds that the risk of disease exposure from the movement of animals, equipment, vehicles and other fomites from Pennsylvania to Texas could lead to disease exposure across Texas.

The Executive Director, therefore, has determined that an outbreak of HPAI in the State of Pennsylvania poses a threat to animal health in Texas.

To protect animal health in this state, the Executive Director imposes a quarantine for the State of Pennsylvania due to HPAI.

The Executive Director hereby orders the following quarantine:

All live poultry, unprocessed poultry, hatching eggs, unprocessed eggs, egg flats, poultry coops, cages, crates, other birds, and used poultry equipment originating from Pennsylvania must not enter Texas without express written consent from the Executive Director.

In accordance with Title 4, Texas Administrative Code §51.5 this quarantine order will be acted on by the Commission at the next appropriate meeting.

This order is issued pursuant to Texas Agriculture Code §§161.041, 161.054, and 161.061 and Title 4, Texas Administrative Code §51.5 and is effective immediately.

This order shall remain in effect pending further epidemiological assessment by the Texas Animal Health Commission.

Signed March 23, 2023.

Andy Schwartz, D.V.M.

Executive Director

TRD-202301164

Jeanine Coggeshall

General Counsel

Texas Animal Health Commission

Filed: March 23, 2023

State Bar of Texas

Committee on Disciplinary Rules and Referenda Proposed Rule Changes, Rules 4.03, 4.04, 8.06, Texas Disciplinary Rules of Professional Conduct

COMMITTEE ON DISCIPLINARY RULES AND REFERENDA PROPOSED RULE CHANGES

Rule 4.03. Dealing With Unrepresented Persons

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Proposed Rule (Redline Version)

Rule 4.03. Dealing With Unrepresented Persons

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. During the course of a lawyer's representation of a client, the lawyer should not give advice to an unrepresented person other than the advice to obtain counsel. With regard to the special responsibilities of a prosecutor, see Rule 3.09.

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.

Proposed Rule (Clean Version)

Rule 4.03. Dealing With Unrepresented Persons

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.

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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. During the course of a lawyer's representation of a client, the lawyer should not give advice to an unrepresented person other than the advice to obtain counsel. With regard to the special responsibilities of a prosecutor, see Rule 3.09.

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TRD-202301152
Haksoon Andrea Low
Disciplinary Rules and Referenda Attorney
State Bar of Texas
Filed: March 23, 2023

Central Texas Council of Governments

Request for Proposal for Audit Services

The Central Texas Council of Governments (CTCOG) is soliciting proposals from qualified firms to audit financial statements of CTCOG and the Central Texas Workforce Development Board, Inc. (CTWDB) for the fiscal year ending June 30, 2023, with the option of auditing its financial statements for each of the four (4) subsequent fiscal years.

The audit shall be conducted in accordance with generally accepted accounting standards and other guidelines as presented in CTCOG's request for proposal.

The proposal packets may be obtained by downloading the RFPs at www.ctcog.org. For proposals to be considered, they must be received by Friday, April 14, 2023.

TRD-202301169
Michael Irvine
Director of Administration
Central Texas Council of Governments
Filed: March 23, 2023

Coastal Bend Workforce Development Board

Request for Proposal for Management and Operation of Career Center System (Including Youth Services) RFP No. 23-05

The Coastal Bend Workforce Development Board, dba Workforce Solutions Coastal Bend (WFSCB) is soliciting responses from qualified individuals or firms for the Management and Operation of the Career Center System (Including Youth Services) for Fiscal Year 2023-24. The contract may be renewed for three (3) additional one-year periods beyond the original acceptance award for a total not to exceed four (4) years.

WFSCB serves the eleven (11) county Coastal Bend Region consisting of the following counties: Aransas, Bee, Brooks, Duval, Jim Wells, Kenedy, Kleberg, Live Oak, Nueces, Refugio, and San Patricio. The Workforce Services Delivery System operates one-stop centers in the Cities of Alice, Beeville, Corpus Christi, Kingsville, and Sinton. WFSCB also operates satellite offices in the Cities of Falfurrias and Rockport. Services provided include general workforce information and referral; customer, employer, and job seeker services; customer intake, program eligibility and assessment; case management; enrollment into education and training programs; job placement; career counseling; support services; follow-up and retention services as funded by the Workforce Innovation and Opportunity Act (WIOA) Youth, Adult, and Dislocated Worker, Temporary Assistance to Needy Families (TANF)/Choices, Supplemental Nutrition Assistance Program (SNAP), Employment and Training, and Wagner-Peyser.

The RFP will be available on Monday, April 3, 2023 at 2:00 p.m. Central Time and can be accessed on our website at: <https://www.workforcesolutionscb.org/about-us/procurement-opportunities/> or by contacting Esther Velazquez at (361) 885-3013 or esther.velazquez@workforcesolutionscb.org.

A Pre-Proposal Conference will be held on Monday, April 10, 2023 at 10:00 a.m. Central Time in the Main Conference Room at WFSCB's Administrative Offices located at 400 Mann Street, Suite 800, Corpus Christi, Texas 78401. The purpose of the meeting is to review the RFP requirements and answer any questions related to the RFP. While this meeting is not mandatory, attendance is strongly recommended. Parties unable to attend in person may participate virtually from a computer, tablet, or smart phone via Zoom:

Join Zoom Meeting

<https://us02web.zoom.us/j/87570695931?pwd=ZGw5ZkZkQzQlVlSF-BmRmZvdTIHeUIRQT09>

US Toll-Free: (888) 475- 4499

Meeting ID: 875 7069 5931

Passcode: 576836

The RFP process consists of the submission of an Application and a Proposal. **Applications are due on Monday, May 22, 2023 at 4:00 p.m. Central Time and Proposals are due on Monday, June 26, 2023 at 4:00 p.m. Central Time.** Responses should be submitted via email to esther.velazquez@workforcesolutionscb.org or may be hand delivered or mailed to: Workforce Solutions of the Coastal Bend, 400 Mann Street, Suite 800, Corpus Christi, Texas 78401.

Workforce Solutions Coastal Bend is an Equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities. Relay Texas: 1 (800) 735-2989 (TDD) and 1 (800) 735-2988 or 711 (Voice). Historically Underutilized Businesses (HUBs) are encouraged to apply.

Este documento contiene información importante sobre los requisitos, los derechos, las determinaciones y las responsabilidades del acceso a los servicios del sistema de la fuerza laboral. Hay disponibles servicios de idioma, incluida la interpretación y la traducción de documentos, sin ningún costo y a solicitud.

TRD-202301151
Esther Velazquez
Contract & Procurement Specialist
Coastal Bend Workforce Development Board
Filed: March 23, 2023

Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil - February 2023

The Comptroller of Public Accounts, administering agency for the collection of the Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of oil for reporting period February 2023 is \$52.24 per barrel for the three-month period beginning on November 1, 2022, and ending January 31, 2023. Therefore, pursuant to Tax Code, §202.058, oil produced during the month of February 2023, from a qualified low-producing oil lease, is not eligible for credit on the oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period February 2023 is \$3.02 per mcf for the three-month period beginning on November 1, 2022, and ending January 31, 2023. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of February 2023, from a qualified low-producing well, is eligible for a 25% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

**Committee on Disciplinary Rules and Referenda
Proposed Rule Changes**

**Texas Disciplinary Rules of Professional Conduct
Rule 4.03. Dealing with Unrepresented Persons**

**Public Comments Received
Through June 8, 2023**

From: [Paul Bishop](#)
To: [cdrr](#)
Subject: Comments for Proposed Rule 4.03
Date: Tuesday, April 25, 2023 10:03:52 AM

Dear Committee,

My comment is that 4.03 should either have a carveout for when a judge orders an attorney to help a pro se litigant.

Additionally, there should be some corresponding judicial rule that a judge cannot order an attorney to assist a pro se litigant.

“A friend” had a case in Nueces County that became a mess because the judge basically told him to help a pro se litigant, do research for the court to the benefit of the pro se litigant, draft docs, etc. It felt unprofessional but an attorney feels obligated to follow a judge’s orders.

Thank you,

Paul Bishop | Associate

Martin, Disiere, Jefferson & Wisdom, LLP
11467 Huebner Rd, Suite 175 | San Antonio, Texas | 78230
Phone: (210) 298-2447 | Fax: (210) 298-2479

 | www.mdjwlaw.com

From: [REDACTED]
To: [cdrr](#)
Subject: CDRR Comment: Proposed TDRPC 4.03
Date: Tuesday, April 25, 2023 9:26:32 AM

*** State Bar of Texas External Message *** - Use Caution Before Responding or Opening Links/Attachments

Contact

| | |
|-------------------|------------|
| First Name | Alan |
| Last Name | Bush |
| Email | [REDACTED] |
| Member | Yes |
| Barcard | 24040612 |

Feedback

| | |
|----------------|---------------------|
| Subject | Proposed TDRPC 4.03 |
|----------------|---------------------|

Comments

Howdy, I'd suggest slightly tweaking this rule so that property tax collection counsel, like me, can pursue justice. We routinely deal with unrepresented taxpayer defendants. Taxpayers often don't know where to go within the property tax system to resolve their concerns. Tax collection counsel should be able to at least point taxpayer defendants in the right direction without drawing an ethics violation. For example, if a taxpayer tells me that he disagrees with the assessed value of his property, I point him to the appraisal district. I explain that the appraisal district sets appraised values - and can sometimes change old appraised values. Nothing more. To ensure that this isn't considered giving "legal advice," the proposed rule could add a comment. The comment would read: "Explaining facts, as counsel reasonably understands them, does not constitute giving legal advice."

From: [REDACTED]
To: [cdrr](#)
Subject: CDRR Comment: Proposed Rules 4.03 (Dealing With Unrepresented Persons)
Date: Tuesday, April 25, 2023 10:07:41 AM

*** State Bar of Texas External Message * - Use Caution Before Responding or Opening Links/Attachments**

Contact

| | |
|-------------------|------------|
| First Name | Sanjay |
| Last Name | Chadha |
| Email | [REDACTED] |
| Member | Yes |
| Barcard | 00795287 |

Feedback

| | |
|----------------|--|
| Subject | Proposed Rules 4.03 (Dealing With Unrepresented Persons) |
|----------------|--|

Comments

The rule should include a safe harbor provision, akin to what retainer agreements have, or what realtors use that "may" be included in communications with unrepresented parties that may be adverse to lawyer so that they understand that Lawyer represents an opposing party and is obligated to further the interests of his/her client, and they should seek their own representation.

From: [REDACTED]
To: [cdrr](#)
Subject: CDRR Comment: Proposed changes to Rule 4.03
Date: Wednesday, April 26, 2023 10:48:30 AM

*** State Bar of Texas External Message *** - Use Caution Before Responding or Opening Links/Attachments

Contact

| | |
|-------------------|------------|
| First Name | John |
| Last Name | Cope |
| Email | [REDACTED] |
| Member | Yes |
| Barcard | 00785784 |

Feedback

| | |
|----------------|-------------------------------|
| Subject | Proposed changes to Rule 4.03 |
|----------------|-------------------------------|

Comments

The proposed rule fails to recognize that in negotiating with persons who have chosen not to engage counsel, there are inherently exchanges of perspectives that could easily be mischaracterized as "advice." Every attorney is already obligated to disclose their client and to recommend that the unrepresented person consult with an attorney of their choosing. This rule change assumes the bar manipulates unrepresented persons and lacks a means to make critical distinctions in the context of negotiations with persons who choose not to engage counsel. The proposed rule thus fails to protect members of the bar from, and indeed would invite, unfair allegations of advice in the context of negotiations.

From: [REDACTED]
To: [cdrr](#)
Subject: CDRR Comment: Suggested Comment regarding proposed rule 4.03 of the TDRPC
Date: Tuesday, April 25, 2023 12:19:44 PM

*** State Bar of Texas External Message *** - Use Caution Before Responding or Opening Links/Attachments

Contact

| | |
|-------------------|------------|
| First Name | Sohaib |
| Last Name | Rehman |
| Email | [REDACTED] |
| Member | Yes |
| Barcard | 24095898 |

Feedback

| | |
|--|---|
| Subject | Suggested Comment regarding proposed rule 4.03 of the TDRPC |
| Comments | |
| Suggesting an additional commentary regarding a lawyer's ability or inability to make statements of law towards unrepresented counter-parties (comes up regularly in divorce cases). | |

From: [Olivia Roberts](#)
To: [cdrr](#)
Subject: Comment on Proposed Rule 4.03
Date: Tuesday, April 25, 2023 9:23:20 AM

Good morning,

Regarding proposed rule 4.03, I believe that the phrase “[s]o long as the lawyer has explained that the lawyer represents an adverse party and is not representing the person” seems unnecessarily ambiguous. What explanation is needed beyond stating, whether verbally or in writing, that the lawyer “represents an adverse party and is not representing the person”? The ambiguity of requiring a more in-depth explanation may leave an attorney not knowing whether they have met their obligation.

Best,
Olivia M. Roberts
#24094918

From: [Viridiana Arellano](#)
To: [cdrr](#)
Subject: Proposed Rules 4.03 Dealing with un represented Persons
Date: Thursday, June 1, 2023 11:49:18 AM

To whom it may concern,

My Name is Rosa Viridiana Arellano a Pro Se in a Family case in Dallas County Texas

I would love to participate in the public hearing on Wednesday Jun 7, 2023 at 10am.
Please let me know what can I do next in order to be part of the Hearing, Thank you

Respectfully
Rosa Viridiana Arellano
Pro se Litigant

Sent from my iPhone

From: [Don and Teresa Neal](#)
To: [cdrr](#)
Subject: Comments on Proposed Amendment to Rule 4.03
Date: Friday, June 2, 2023 9:34:54 PM
Attachments: [Comments on Amendments to Rule 4-03 from Don Neal.doc](#)

Rules Committee:

Attached please find my comments to proposed amendments to Rule 4.03 from the perspective of a state government attorney. Please consider for possible insertion of an additional clarifying comment to Rule 4.03.

Thank you for your consideration.

Respectfully yours,

Donald West Neal, Jr.

(aka Don Neal), Bar #14834120
General Counsel, Operations &
Support Legal Services, Texas
Comptroller of Public Accounts

Comments on Amendments to Rule 4.03

Submitted by Don Neal, General Counsel, Operations & Support Legal Services,
Texas Comptroller of Public Accounts, in his individual capacity

The proposed amendment to Rule 4.03, related to Dealing with Unrepresented Persons, should include a comment that the rule does not prohibit government attorneys from providing information to members of the public who ask questions about government programs or procedures that may affect the person. The proposed amendment says:

“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.”

The concern is that this sentence, without clarification, could stymie the ability of government attorneys to serve the public. Many governmental agencies, including state agencies, are called upon to provide information to members of the public about the government agency’s programs or duties. Often times, a government attorney will receive unsolicited questions from members of the public who are affected by a government program. The person may ask about procedures or processes, or even ask about next steps involving an enforcement action, tax situation, or grant or application process. If an issue or program is particularly complex, the complex questions are often referred to a government attorney to provide assistance. The government attorney is often tasked with assisting members of the public. Providing such information should not be construed as providing legal advice. Furthermore, the duties of government lawyers may also include conducting an investigation, either internal to the government agency or external. For instance, a government lawyer supporting the Human Resources function of a state agency, may be required to conduct an investigation to determine whether there has been employee misconduct and such an investigation often requires interviewing affected employees. The proposed rule, without such clarification, could significantly hamper the abilities of government attorneys to be able to assist members of the public or perform other duties required by law. Without the clarification, members of the public will be forced to try to figure out government processes or procedures on their own. And government attorneys could be hampered in the ability to perform required investigations. The proposed rule without clarification, could significantly undermine the ability of government lawyers to serve the public and undermine the ability of government lawyers to fulfill the duties of their government agency clients.

Recommend adding an additional sentence to Comment 2 or add a third comment that says something like: “This Rule does not prohibit a government lawyer from answering questions or providing information to members of the public or to employees of the agency. The Rule likewise does not prohibit a government lawyer from conducting an investigation as may be required by law.”

From: [Rachel Stroud](#)
To: [cdrr](#)
Subject: RE: Public Hearing Reminder - Proposed Disciplinary Rule Changes
Date: Monday, June 5, 2023 2:48:47 PM

Good afternoon:

I would like to participate in the section regarding Rule 4.03 dealing with unrepresented persons. I deal with pro se claimants quite a bit in my practice and am concerned about the changes with respect to: "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."

In my practice we have special procedures to dealing with Proofs of Claim in Insurance Receivership Proceedings. We are to explain the process for hearing the objections to the pro se claimant and if applicable we discuss what is lacking in their objection or what additional information is needed. We try to reach a settlement if possible with them. I would be concerned with what is included in giving legal advice. We do make it clear that we are not aligned with them and what our client's position is with respect to their claim. We also let them know about the functions of the Guaranty Associations if applicable and how to pursue a claim with the Associations.

Sincerely,

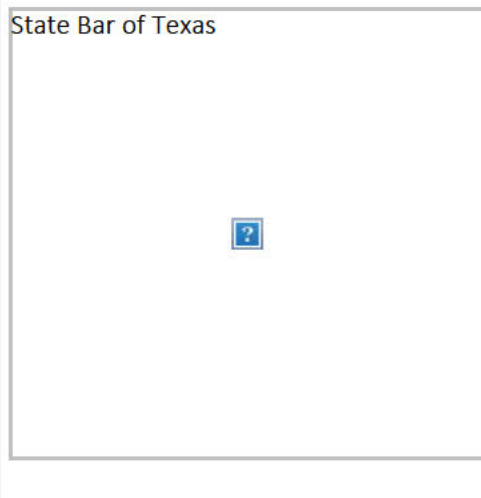
Rachel Stroud
The Stroud Firm, PLLC
16000 Pool Canyon Rd
Austin, Texas 78734
Phone: 512/293-8244
Email: [REDACTED]

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From: State Bar of Texas - CDrr <cdrr@texasbar.com>
Sent: Monday, May 8, 2023 10:03 AM
To: Rachel Stroud [REDACTED]

Subject: Public Hearing Reminder - Proposed Disciplinary Rule Changes



Public Hearing Reminder

June 7 Public Hearing on Proposed Rules 4.03 (Dealing With Unrepresented Persons), 4.04 (Respect for Rights of Third Persons), 8.06 (Choice of Law), TDRPC

The Committee on Disciplinary Rules and Referenda published [Proposed Rules 4.03 \(Dealing With Unrepresented Persons\), 4.04 \(Respect for Rights of Third Persons\), 8.06 \(Choice of Law\)](#) of the Texas Disciplinary Rules of Professional Conduct in the April issue of the Texas Bar Journal and the April 7 issue of the Texas Register.

The Committee will hold a public hearing on Proposed Rules 4.03, 4.04, and 8.06 by teleconference at 10 a.m. CDT on June 7, 2023. For teleconference participation information, please go to texasbar.com/cdrr/participate, where an agenda with a Zoom link will be posted before the meeting. If you plan to address the Committee at the public hearing, it is requested that you email cdrr@texasbar.com in advance of the hearing stating the rule(s) on which you will comment.

The Committee will continue to accept comments concerning Proposed Rules 4.03, 4.04, and 8.06 through June 8, 2023. Comments can be submitted [here](#), or by email to cdrr@texasbar.com.

Additional Information

The Committee is responsible for overseeing the initial process for proposing a change or addition to the disciplinary rules (Gov't Code § 81.0873). For more information, go to texasbar.com/cdrr.

To subscribe to email updates, including notices of public hearings and published rules for comment, click [here](#).

Committee on Disciplinary Rules and Referenda

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Committee on Disciplinary Rules and Referenda Proposed Rule Changes

Texas Disciplinary Rules of Professional Conduct

Rule 4.03. Dealing With Unrepresented Persons

Rule 4.04. Respect for Rights of Third Persons

Rule 8.06. Choice of Law

Public Comments Received (Multiples Rules)

Through June 8, 2023

From: [Peter Lomtevas](#)
To: [cdrr](#)
Subject: Re: Seeking Comments on Proposed Rules 4.03, 4.04, and 8.06, TDRPC
Date: Tuesday, April 25, 2023 11:13:26 AM

Rule 4.03

I disagree with the redline changes. You are heaping on too much regulation that burdens the administration of justice.

In many instances, during a civil action, an opponent discharges her lawyer perhaps because she can no longer afford him. This leaves the remaining lawyer, who has an interest in finishing the action as guided by his client, now has to maintain obstacles to finishing the matter by saying to the pro se opponent that she must secure new counsel.

The comment adds that the remaining lawyer is permitted to negotiate terms of a transaction with an unrepresented person, but how can that happen without the giving of legal advice as to the legal effect of any term. "Sorry ma'am, I cannot discuss that term with you. You must retain counsel." Nothing would ever be done and no such case would ever end.

Stop the burdening of the remaining lawyer.

Rule 4.04

I disagree with the redline changes as they empower the adversary to unilaterally withdrawing documents by simply asserting that the lawyer should have known the document was sent inadvertently.

You are setting up a system where the Texas lawyer has to walk on eggshells during every case. Here, every transmission becomes a hand grenade real to blow up in the lawyer's face when the adversary chooses to withdraw a transmission.

Stop setting trap for layers.

Rule 8.06

After muddling through this verbal Caesar salad, I think this version aims to impose a lex loci rule for attorney discipline. I do not like the verbose, poorly written way this rule appears, and only applies to advertising and client solicitations.

I practice in four states including Texas. After reading this, I do not know if I am safe or not advertising one thing or another in any state. Also notoriously missing is other multi-jurisdiction choice of law as to how to go inactive, how to retire, how to satisfy all states' CLE requirements, and what about activities in federal courts?

Peter

www.lomtevas.com

On Tuesday, April 25, 2023 at 08:44:27 AM CDT, State Bar of Texas - CDRR <cdr@texasbar.com> wrote:

State Bar of Texas



Proposed Rules Published

Public Comments Sought

Proposed Rules 4.03 (Dealing With Unrepresented Persons), 4.04 (Respect for Rights of Third Persons), 8.06 (Choice of Law), TDRPC

The Committee on Disciplinary Rules and Referenda published [Proposed Rules 4.03 \(Dealing With Unrepresented Persons\)](#), [4.04 \(Respect for Rights of Third Persons\)](#), and [8.06 \(Choice of Law\)](#) of the Texas Disciplinary Rules of Professional Conduct in the April issue of the Texas Bar Journal and the April 7 issue of the Texas Register.

The Committee will accept comments concerning Proposed Rules 4.03, 4.04, and 8.06, TDRPC, through June 8, 2023. Comments can be submitted [here](#), or by email to cdr@texasbar.com.

The Committee will hold a public hearing on Proposed Rules 4.03, 4.04, and 8.06 by teleconference at 10 a.m. CDT on June 7, 2023. For teleconference participation information, please go to texasbar.com/cdr/participate. If you plan to address the Committee at the public hearing, it is requested that you email cdr@texasbar.com in advance of the hearing stating on which rule(s) you will comment.

Additional Information

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Committee on Disciplinary Rules and Referenda

State Bar of Texas | 1414 Colorado | Austin, Texas 78701 | 800.204.2222

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Higher Logic



From: [REDACTED]
To: [cdrr](#)
Subject: Comments on Proposed Rules 4.03 (Dealing With Unrepresented Persons), 4.04 (Respect for Rights of Third Persons), 8.06 (Choice of Law), TDRPC
Date: Tuesday, April 25, 2023 10:59:03 AM

To the Committee on Disciplinary Rules and Referenda,

I have reviewed the proposed Rules 4.03 (Dealing With Unrepresented Persons), 4.04 (Respect for Rights of Third Persons), and 8.06 (Choice of Law) and would like for the Committee to take the following opinion into consideration.

I see no reason to modify or change the existing Rules 4.03 or 4.04. The addition to these rules does not protect the public any more than the existing rule. If the addition is added to protect the public, it does so in only a de minimus manner. However, these additions will add another way for securing a conviction of discipline against lawyers, especially when there is no intent to deceive or harm the public.

For example, the change to Rule 4.03 comment includes the sentence "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 sentence leaves the determination of guilt or innocence completely up to the investigator with no guidance for the lawyer.

Please do not make any changes to Rule 4.03, other than to include a comment or provision that requires tangible proof against the lawyer.

The comment section of Rule 4.04 includes the phrase "If a lawyer knows or reasonably should know..." Why the ambiguity? How is a lawyer to protect him/her self from discipline when the rule is ambiguous and subjective? There is either evidence of knowledge or not. And if not, there should be a presumption that there was no knowledge or intent.

Please make no changes to Rule 4.04, unless, again, the rule includes a provision that there must be actual evidence to convict the lawyer.

Rule 8.06, on the other hand, appears to provide additional guidance for lawyers. Please include this change to the Rules.

Sincerely,



/s/Thomas A. Nicol

The Nicol Law Firm, PLLC
9540 Garland Road
Suite 381-306
Dallas, Texas 75218
Telephone (214) 722-7400

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From: [Riley, Bria](#)
To: [cdrr](#)
Subject: Comments to Proposed Rules 4.04(c) Respect of Rights of Third Person and 8.06(a)(2) (Choice of Law)
Date: Thursday, May 11, 2023 12:11:15 PM

Hello,

Proposed Rule 4.04(c) Respect of Rights of Third Person:

In the comment section that addresses the proposed addition of part (c) to the aforementioned rule states as follows:

Metadata in electronic documents creates an obligation under this Rule only if the receiving lawyer knows or reasonably should know that the metadata was inadvertently sent to the receiving lawyer.

I'm proposing that in addition to the above requirement for an obligation to be created that the lawyer also "know or reasonably should know that metadata is actually included in the document or electronically stored information."

- The reason is that metadata can be difficult to ascertain or detect within a document that may be presumed to *not* fall under the jurisdiction of this rule, but would otherwise if metadata were within a document or electronically stored information that was inadvertently sent. I believe the key here is whether the lawyer knows or reasonably should know whether inadvertent metadata was also inadvertently sent or embedded into a document or electronically stored information that was inadvertently sent to that lawyer.

Finally, what if the lawyer is notified that the document or electronically stored information was inadvertently sent by the opposing party or their lawyer without the lawyer having actually received or read it yet? Would they still have an obligation under this rule to confirm with the third party or their lawyer that in fact they did receive said information inadvertently? Or, has the notice obligation been resolved by the fact that the sender came forward first to the lawyer who inadvertently received said information or document?

- I don't think this question is clearly answered by the proposed comment changes that explain the proposed rule changes.

Proposed Rule 8.06(a)(2) Choice of Law:

I think the reasonable and prudent lawyer would believe that the jurisdiction in which their conduct occurred would be the jurisdictional rules that apply. This is because lawyers may not know of where the predominant effect of their conduct may occur outside of the jurisdiction where their conduct occurred. For this reason, a reasonable and prudent lawyer may not be concerned with (or know that they could be potentially violating) the jurisdictional rules of where the predominant effect of their conduct occurs especially where they reasonably believe that their conduct and its predominant effect will occur in the same jurisdiction with that jurisdiction's rules being applicable. For these reasons, I think the jurisdictional rules that should apply to a lawyer's conduct should only be the jurisdiction where the conduct takes place, not the jurisdiction where the predominant effect of their conduct may occur.

Regards,

BRIA RILEY

Director, Corporate Counsel
Advertising, Marketing,
Intellectual Property, Contracts

Office: (469) 644-5748



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From: [David Schafer](#)
To: [cdrr](#)
Subject: Regarding 4.03-4.04
Date: Tuesday, April 25, 2023 9:14:37 AM

Providing third parties an avenue to grieve attorneys is a horrible idea. I completely agree with the goal of these rules, however the exposure of attorneys to frivolous grievances by unhappy counter parties is not the way to accomplish this. My practice routinely involves negotiations with unrepresented litigants. This proposal adds layers of work to protect myself from unhappy litigants that may file a frivolous grievance.

**Video of Public Hearing on Proposed Rule 4.03 of the Texas Disciplinary
Rules of Professional Conduct**

Held on June 7, 2023, by the Committee on Disciplinary Rules and Referenda

Video of Public Hearing on June 7, 2023

<https://texasbar-wo4m90g.vids.io/videos/069fdab2131de8c58f/cdrr-meeting-june-7-2023>

Comments on proposed Rule 4.03:

Rosa Arellano at 00:06:13

Scott Ehlers at 00:11:02

Michael Rodrigues 00:13:29

Taran Champagne 00:13:55

Current Texas DRPC 4.03 (2022)
V.T.C.A., Govt. Code T. 2, Subt. G App. A, Art. 10, § 9, Rule 4.03
Rule 4.03. 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.

COMMENT:

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. During the course of a lawyer's representation of a client, the lawyer should not give advice to an unrepresented person other than the advice to obtain counsel. With regard to the special responsibilities of a prosecutor, see Rule 3.09.

MRPC RULE 4.3 (2022)

Model Rules of Professional Conduct

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(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.

Comparison of MR 4.3 with Current Texas DRPC 4.03 (2022)**Rule 4.03. 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:

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~~ During the course of a lawyer's representation of a client ~~and, where necessary, explain that, the client has interests opposed to those of the lawyer should not give advice to an~~ 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 other than 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~~ With regard to the special responsibilities of a prosecutor, see Rule 3.09.

Johnson, Vincent

10. Proposed Texas DRPC 4.03 (2022)

8/4/2023 4:40 PM

Proposed Texas DRPC 4.03 (2022)
Rule 4.03. Dealing With Unrepresented Person

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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.

Commented [JV1]: This long-standing rule is so important that it should not be relegated to the footnote. The last clause of the proposed sentence, quoted from Model Rule 4.3, clarifies how far the no-advice rule extends.

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. During the course of a lawyer's representation of a client, the lawyer should not give advice to an unrepresented person other than the advice to obtain counsel. With regard to the special responsibilities of a prosecutor, see Rule 3.09.

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.

Commented [JV2]: This language is quoted from Model Rule 4.3 cmt. 2. It contains useful illustrations that will be helpful to Texas lawyers.

Unlike current Texas Rule 4.03, the proposed 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." This would provide Texas lawyers with a modicum of space in which to exercise discretion.