

## **Ethical Rules Relating to Attorneys Dealing with Self-Represented Litigants:**

1. **RULE 4.3 DEALING WITH UNREPRESENTED PERSONS** – This is the rule that governs communicating with unrepresented persons, mainly including that an attorney cannot appear disinterested to an unrepresented opposing party or give that person legal advice. Further, if the pro se litigant appears to misunderstand the lawyer’s role, the lawyer has the duty to correct the misunderstanding by “reasonable efforts.”
2. **RULE 3.3 CANDOR TOWARD THE TRIBUNAL** – This rule provides in part that “A lawyer shall not knowingly: . . . (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel.” This does not come up as often when opposing party is represented. This should inform the lawyer in their brief/legal argument.
3. **RULE 1.7 CONFLICT OF INTEREST: CURRENT CLIENTS** – This rule would be implicated if there was a conflict of interest that could be waived. It could be tricky to get that sort of waiver from an unrepresented party, so my advice would be to just decline representation, because it wouldn’t probably be worth the trouble of getting the waiver and still comply with the other ethical rules regarding opposing pro se litigants.
4. **RULE 3.4 FAIRNESS TO OPPOSING PARTY AND COUNSEL** – Most of this rule is applicable even more so in pro se cases. The rule covers obstructing evidence, falsifying evidence, paying off witnesses, making frivolous discovery requests, failing to comply with discovery request, in trial alluding to any matter the lawyer does not reasonably believe is relevant or supported by admissible evidence, advising potential witnesses to be unavailable at the time of trial, and threatening criminal charges (unless true and for a not wrongful purpose).
5. **RULE 3.5 IMPARTIALITY AND DECORUM OF THE TRIBUNAL** – This rule is regarding no ex parte communications, communications with jurors, influencing of a judge or juror, any disruptive conduct in court, or failure to inform the tribunal of a juror’s improper conduct.

## **Discussion Questions:**

1. In light of the ethical rules identified above, what is model conduct for an attorney representing a party who is opposed by a pro se litigant (in both in-person court interactions, settlement negotiations, and written materials submitted to the court)?
2. What are the expectations from the court for such attorney?
3. What is the Court’s recommendation for complying with all applicable ethical rules (including those identified above) while still representing the attorney’s own client in compliance with all applicable ethical rules?