



Dealing With the Unrepresented Party

A lawyer who represents landlords in the Seattle area has written a thoughtful article on how to handle yourself when the other side is *pro se*, which is another way of saying “appearing in court without a lawyer.”¹ Here are some of the points he makes, which are just as valid for Arizona practice.

First, be familiar in all *pro se* situations with ER 4.3 (Dealing with Unrepresented Person).² This rule requires a lawyer, when dealing with a person who is not represented by counsel, to avoid stating, implying or acting as though the lawyer is “disinterested” and to make reasonable efforts to enlighten any unrepresented party who seems to misunderstand the lawyer’s role in the matter. The lawyer may engage in settlement negotiations with the other side, prepare documents for the unrepresented person’s signature, and even explain the lawyer’s view of the parties’ respective legal obligations.³ But other than that, the general wisdom is that the only legal advice a lawyer can give an unrepresented person is to get a lawyer.

A related concept is found in ER 1.13(f), which requires a lawyer who is representing an organization to explain to the organization’s constituents who it is that he is representing when the lawyer determines that the interests of the organization may be different from those of the constituents with whom he is dealing.

Here are some other considerations that should always be kept in mind, especially in the litigation context:

Be civil and professional when dealing with an unrepresented person.

This is a given and is, of course, a requirement of both our Oath of Admission to the Bar and the Lawyer’s Creed of Professionalism, both of which are now included in our ethical obligations.⁴ This can be difficult in really adversarial situations, especially when the other party is taking everything personally.

Don’t count on your knowledge of court procedure to win your case.

Judges are human beings, and they have been known to be much more lenient with a *pro se* litigant’s failure to follow court rules strictly than when a lawyer does the same thing. This is especially true on complying with the rules of evidence.

Confirm in writing all agreements and stipulations made during pretrial and settlement discussions.


Those of us who have had the unpleasant experience of a disagreement over “who said what and when” with an unrepresented party know how hard it is sometimes to overcome the

natural judicial sympathies that favor the *pro se* litigant, especially when he is accusing the lawyer of confusing him or using language he didn’t understand. A confirming email or letter will really help in these situations.

Take the *pro se* seriously. Some unrepresented persons can be very persuasive.

Bottom line: Take the *pro se* seriously. Some unrepresented persons can be very persuasive, especially if they have a better command of the facts than your client does. And some of them even show up at the last minute with a really good lawyer. So always be prepared to take your best shot, even if you

think there won’t be a lawyer on the other side.

Dealing with the unrepresented person has been known to be more stressful and time consuming for the lawyer than if there were opposing counsel. We lawyers get used to winning for our clients, or taking our lumps, because we get to go on to the next case. Remember that the *pro se* litigant has a distinctly personal interest in the proceedings: He’s playing for keeps. 

Ethics Opinions and the Rules of Professional Conduct are available at www.azbar.org/Ethics



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endnotes

1. Evan L. Loeffler, *Dealing With Pro Se Litigants*, GPSOLO L. TRENDS & NEWS (Fall 2010).
2. Rule 42, ARIZ.R.S.CT.
3. Comment [2] to ER 4.3.
4. Rule 31(a)2E, ARIZ.R.S.CT., now provides that substantial or repeated violations of the oath of admission or the lawyer’s creed constitutes “unprofessional conduct” and is a violation of Rule 41(g), subjecting the lawyer to discipline under Rule 54(i).