

## Professional Responsibility

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# Fairness to Opposing Parties & Others

## 1 Fairness to Opposing Parties

### Rule 3.4

*Roth v. La Societe Anonyme Turbomeca France* (Mo. App. 2003)

- Plaintiff's interrogatories asked about defendant's insurance coverage
  - Defendant falsely stated limit was \$50 million
  - Plaintiff's entered into settlement agreement, relying on defendant's misrepresentation
  - After executing the agreement and receiving payment, plaintiff's discovered true policy limit
- Court affirmed dismissal of negligent misrepresentation and conspiracy claims against attorney
  - Attorney did not owe negligence duty of care to non-client
  - Attorney, acting as client's agent, cannot conspire with client

## 2 Communications and Dealings With Non-Clients

### 2.1 Truthfulness In Statements To Others

#### Rule 4.1

### 2.2 Communication With Person Represented By Counsel

#### Rule 4.2

*Palmer v. Pioneer Inn Assocs.* (Nev. 2002)

- Application of "no contact" rule to employees of organization represented by counsel
- Different tests have been applied to determine which organizational employees are covered by the rule
  - Control group: only high-level management
  - Managing-speaking test: employees with authority to speak for the organization with respect to the matter at issue. Based on *Upjohn C. v. US* (US 1981) (applying similar test to determine which employees' communications with attorney are covered by privilege)
  - Admission test: any employee whose statements would be attributable to the organization as an admission by a party-opponent under the rules of evidence

## **2.3 Dealing With Unrepresented Person**

Rule 4.3

## **2.4 Respect For Rights Of Third Persons**

Rule 4.4