

Good Morning:

We continue with Rule 2.1, the Counselor as *Advisor*. I will quote the rule again, but this time quote from a different part of the Comment to the Rule. All of the Rules and their Comments are in AR 27-26.

COUNSELOR

Rule 2.1 Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social, and political factors, that may be relevant to the client's situation, but not in conflict with the law.

COMMENT:

Scope of Advice

Advice couched in narrowly legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. ...

My Comment: This brings to mind the story of the balloonists who were out for a wonderful Sunday outing, and while floating over the countryside, they lost their bearings. They noticed a group of people by a river. They let some air out of their balloon so that they could drop down just enough to halloo the crowd and ask where they were. It was then that they noticed that it was an ABA picnic. As they hovered over a group of the picnicking lawyers, they yelled down: "Where are we?" The lawyers looked at each other, discussed it, and their spokesperson yelled back: "You are about 25 feet in the air hovering over a flowing body of water." With disgust, the balloonists fired up the air and moved on, and one commented to the other: "Ain't that just a typical lawyer's answer ... absolutely, precisely correct, but absolutely useless!"

Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.

...

Matters that go beyond strictly legal questions may also be in the domain of another profession. ... business matters can involve problems within the competence of the accounting profession or of financial specialists. Where consultation with a professional in another field is itself something a competent lawyer would recommend, the lawyer

should make such a recommendation. At the same time, a lawyer's best advice often consists of recommending a course of action in the face of conflicting recommendations of experts.

My Comment: First, make sure that the client knows about other relevant expertise that can help and, where appropriate, refer him or her to that specialist. Conversely, the lawyer should be very cautious about impinging in the area of some other expertise.

Second: Part of the lawyer's job as "Advisor" is to help the client cut through all of the chaff (including that of the other experts), focus on what is relevant to the issue, assess the various conflicting opinions and recommendations, balance the competing facts, views, courses of action, and offer his or her analysis and what he or she considers the best course of action. Remember that the overall title of the section is "Counselor." This requires communication, not just one way, but a dialogue between lawyer and client. Next time we will review Rule 1.14 found under the "Client-Lawyer Relationship," *Communication*.

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