

At the end of PCR #00-06 that concluded our review of Rule 2.1, the Counselor as Advisor, I talked about the importance of communication, and that this time we would review **Rule 1.4 Communication**, found under the rules governing the "Client-Lawyer Relationship."

### **Rule 1.4 Communication**

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation.

#### **COMMENT:**

The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. ... **[My Comment: An important aspect of "sufficient information" is to ensure that the client has a clear understanding of our advice, even if, especially if, it is unpopular. If our advice/counsel is "no," make sure that this is clear up front. Ensure that the client understands the risk. As mentioned before, we may package our advice in a manner that makes the client more receptive, but be careful that we don't so carefully package the advice that the client misses the main point!]**

Adequacy of communication depends in part on the kind of advice or assistance involved. ... The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation.

When the client is the Army, it is often impossible or inappropriate to inform everyone of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the Army ... **[My Comment: Notwithstanding that the Army is our client acting through its authorized officials and that we have a professional obligation to "keep a client reasonably informed," this does not mean that any and every official of the Army is entitled to such information. We too need to practice "need to know" and ensure that those we address communications are "appropriate officials" of the client.]**

In some circumstances, a lawyer may be required to withhold information from a client. For example, classified information ... In other circumstances, a lawyer may

be justified in delaying transmission of information when the client would be likely to react imprudently ... [e.g.] withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience, or where disclosure would be favorable to the defense of a criminal accused. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client...." [e.g., protective orders].

**[Final Comment:** We should not forget that communication is a two-way street. I suggest that Rule 1.4 also requires communication in the form of questions, inquiry and examination of the client so that we ensure that we understand what the client is trying to accomplish, limitations, relevant facts and circumstances, fall-back positions, etc.]

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