

## Standard 7.8 on Legal Counseling

# STANDARD 7.8 ON LEGAL COUNSELING

## STANDARD

*The practitioner should effectively counsel the client throughout the representation to assure the client understands available options and the potential benefits and risks of each.*

## COMMENTARY

### General considerations

One of a practitioner's key functions is to counsel clients to help them understand their legal problem fully and choose how to respond. The client, not the practitioner, must ultimately determine the objective to be sought within the limits imposed by law and the practitioner's ethical obligations.<sup>1</sup> An important role of the practitioner is to utilize legal knowledge and problem solving skills to elicit the client's understanding of the problem and to identify possible outcomes and the options available to accomplish them. Sometimes, a client will have limited expectations and the practitioner can present available options that go well beyond what the client thought possible. In other situations, the law may severely limit what can be done, even though the client may feel entitled to much more.

### Responsibilities associated with effective legal counseling

Legal counseling is an essential ingredient of effective legal representation.<sup>2</sup> It calls for the practitioner to offer candid guidance based on the law and the specific circumstances of the client. The counseling should take into account damaging as well as favorable facts and should honestly convey potential negative outcomes and alternatives as well as positive ones.<sup>3</sup> Legal counsel should be expressed in terms that help the client understand the full implications of the issue, not just its narrow legal aspects. It can properly be based on moral, economic, social and political consideration as well as the law.<sup>4</sup>

---

<sup>1</sup> See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 7.2 (on Client Participation in the Conduct of Representation).

<sup>2</sup> The term, "advice," is used in Model Rules of Professional Conduct R. 2.1 (2003) and covers legal counseling as used in this Standard. The Rule reads: "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."

<sup>3</sup> Paragraph 1 of the Comment to Model Rules of Professional Conduct R. 2.1 (2003) reads in part: "A client is entitled to straightforward advice expressing the lawyer's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a lawyer endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client."

<sup>4</sup> Paragraph 2 of the Comment to Model Rules of Professional Conduct R. 2.1 (2003) notes: "Advice couched in narrow 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. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer

## Standard 7.8 on Legal Counseling

In full representation, the practitioner should counsel the client at key stages of the case, particularly when the client is deciding on the objective for the representation and is making important strategic choices.<sup>5</sup> The practitioner should present potential results and reasonable strategies for achieving them. The practitioner should explain the relative advantages and disadvantages of different options and the potential benefits and risks for the individual and, where pertinent, for others who may be affected by the strategy chosen.

---

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.”

<sup>5</sup> See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 3.1 (on Full Legal Representation).