



Title of Program _____

Date of Program _____

Presenting Inn _____ Inn Number _____

Inn City _____ Inn State _____

Contact Person _____ Phone _____

E-mail Address _____

Please consider this program for the Program Awards: Yes No This program is being submitted for Achieving Excellence: Yes No

Program Summary:

Indicate the legal focus and be concise and detailed in summarizing the content and setup of your program. Please attach additional sheets if necessary.

Program Materials:

The following materials checklist is intended to insure that all the materials that are required to restage the program are included in the materials submitted to the Foundation office.

- Did the program use a written script? Yes No
- Did the program material include any newspaper, magazine, or web articles? Yes No
- Did the program material include any copies of citations of law or legal documents? Yes No
- Did the program material include a fact pattern for the program? Yes No
- Did the program material include a list of questions for the program? Yes No
- Did you hand out any materials before or during the program? Yes No
- Did this program use PowerPoint, CD, DVD or other media during the course of the presentation? Yes No

Please include a copy of any of the above existing materials with your program submission.

Specific Information Regarding the Program

Number of participants required for the program _____ Has this program been approved for CLE? Yes No

Which state's CLE? _____ How many hours? _____

Program Submission Form

Roles:

List the exact roles used in the demonstration and indicate their membership category; *i.e.*, Pupil, Associate, Barrister or Master of the Bench.

Role	Membership Category

Agenda of Program:

List the segments and scenes of the demonstration and the approximate time each step took; *i.e.*, "Introduction by judge (10 minutes)."

Item	Time

Recommended Physical Setup and Special Equipment:

i.e., VCR and TV, black board with chalk, easel for diagrams, etc. When submitting video, please indicate the length of all videos. *i.e.*, 30 or 60 min.

Comments:

Clarify the procedure, suggest additional ways of performing the same demonstration, or comment on the response from the Inn members regarding the demonstration.

Questions:

Please contact Andrew Young at (703) 684-3590 ext 106 or by e-mail at ayoung@innsofcourt.org.



Middle Temple

FAMILY:

K. Stone
R. Romano
J. Scarola
M. Chaves
J. Diaz
P. Gabe

CRIMINAL:

S. Neelakanta
S. Levine
A. Rabinowitz
K. Skorupa
K. Spillias
D. Zuniga

CIVIL:

S. Curry
N. Atkinson
W. Mason
M. O'Donnell
T. White
C. DeGraffenreidt

CLIENTS SAY THE DARNDEST THINGS

Presented by CSB Inn of Court - Middle Templars

11-15-11

OVERVIEW:

A one hour CLE ethics presentation consisting of three 20 minute vignettes with alternating questions to each pupillage. The Family Law vignette will address ethical issues involving manipulation of children to gain a divorce advantage, sexual relations between lawyer and client, and financial assistance from a lawyer to a client. Criminal will speak to three scenarios involving a lawyer's duty of confidentiality and when/whether there is a duty to disclose client

confidences. Finally, the Civil vignette will address a lawyer's duties to a client who is under a disability, conflicts with experts and client ongoing criminal conduct. Rules addressed will be 4-1.2; 4-1.3; 4-1.6; 4-2.1; 4-3.3; EO 90-1; EO 75-44; 4-1.14; 4-3.3; 4-1.6; 4-2.1; 1-1.4 Each vignette will raise three questions to be presented alternatively to each pupillage.

DESCRIPTION

Set in the format of the Entertainment Tonight talk show, the Middle Templars will present three scenarios that raise ethical issues in Family Law, Criminal Law and Civil Law, respectively.

OPENING REMARKS

6:05 to 6:10 Rodney Romano

Family Law Vignette

6:10pm to 6:25pm

Criminal Law Vignette

6:26pm to 6:41pm

Civil Law

6:42pm to 6:57pm

Conclusion/Adjournment

6:57 to 7pm

Vignette #1 – 20 minutes

FAMILY SECTION:

Julie Diaz – Scorekeeper

Rodney Romano – AV operator

Roles:

Reporter – Jack Scarola (Rodney Romano, understudy)

Wife – K. Lo - Kristen Stone

Wife's Attorney –Mr. Eibin Tappendaht - Paul Gabe

Narrator – questions – Misty Chaves

Talk Show Format: ET

Jack: Everyone has probably heard the recent headlines concerning the split-up of K. Lo and Caesar. While the break-up and impending divorce was only recently made public, apparently K. Lo and Caesar have been separated and living apart for quite some time. According to our sources, the divorce is becoming quite contentious. Here to speak with us today is K. Lo and her attorney, Eibin Tappendaht.

Hello. Let's jump right into the meat of things and talk about the divorce proceedings. **K.Lo**, it indicates in the documents that we have uncovered that you are seeking custody of the children. I've always felt you seemed a little estranged from the children and so this came as a bit of a surprise to me. Is it true that you are seeking sole custody of the children?

K.Lo: Yes. It's true. I **am** seeking sole custody of the lil darlings.... Its not that I actually **want** custody of them, its just that I've "heard" (as she looks at Eiben) that I can get more child support from **Caesar** if I have the brats...um, I mean lil darlings.

Misty:

QUESTION #1 (on screen simultaneously) – CARBOLIC SMOKEBALL:

Does an attorney representing a party in a divorce owe any responsibilities to the children of the divorce, i.e., when the party being represented says they do not really care for the children, but just want custody in order to get more financial support from the other party?

ANSWER #1:

Short answer: Ethically no, morally, yes.

Source:

While Family Law attorneys are bound by the Florida Rules of Professional Conduct, they should also be aware of ethical Rules promulgated by The American Academy of Matrimonial Lawyers. Specifically, The American Academy of Matrimonial Lawyers acknowledges that existing Codes do not always provide adequate guidance to the family lawyer.

Bounds of Advocacy: “aspirational” code of conduct

7. The Children

7.1. An attorney representing a parent should consider the welfare of the minor children and seek to minimize the adverse impact of the family law litigation on them.

In re Report of Family Court Steering Committee, 794 So. 2d 518, 524 (Fla. 2001)

7.2. An attorney should not permit a client to contest parental responsibility or contact and access for either financial leverage or vindictiveness.

REPORTER: Hmm... ok. well... umm..... let’s talk about your life since the break-up. You seem happy.... And rumor has it you’ve been seeing someone. (looks at Attorney) Eiben Tappendaht, what can you tell us about that?

Eiben Tappendaht: Well, it’s certainly no secret that K. Lo is a beautiful woman and I have to admit we have developed some chemistry.... So, I guess we can go public? (looking at K. Lo) – K. Lo and I have been.... Ummmm..... “seeing each other” – if you know what I mean....

K. Lo: (jumping in) Oh yes, we might as well go public – I mean, **Jack**, just look at him (eying attorney), Can you blame me? A few months into his representation of me... and I just couldn’t “resist him”.... ummm.... If you know what I mean.....

Misty:

QUESTION #2 – INNER TEMPLE:

Any ethical issues with an attorney having a sexual relationship with a client once the representation has commenced?

ANSWER #2:

Short Answer – No

Source:

4 RULES OF PROFESSIONAL CONDUCT

4-8 MAINTAINING THE INTEGRITY OF THE PROFESSION

RULE 4-8.4 MISCONDUCT

A lawyer shall not:

(i) engage in sexual conduct with a client or a representative of a client that exploits or adversely affects the interests of the client or the lawyer-client relationship.

If the sexual conduct commenced after the lawyer-client relationship was formed it shall be presumed that the sexual conduct exploits or adversely affects the interests of the client or the lawyer-client relationship. A lawyer may rebut this presumption by proving by a preponderance of the evidence that the sexual conduct did not exploit or adversely affect the interests of the client or the lawyer-client relationship.

The prohibition and presumption stated in this rule do not apply to a lawyer in the same firm as another lawyer representing the client if the lawyer involved in the sexual conduct does not personally provide legal services to the client and is screened from access to the file concerning the legal representation.

Comment:

Sexual conduct between a lawyer and client violates this rule, regardless of when the sexual conduct began when compared to the commencement of the lawyer-client relationship, if the sexual conduct exploits the lawyer-client relationship, negatively affects the client's interest, creates a conflict of interest between the lawyer and client, or negatively affects the exercise of the lawyer's independent professional judgment in representing the client.

Jack: Well.... That's all very interesting.... But let's shift gears for just a moment and discuss another rumor we've heard.... Money. The rumor is that since investing in the Miami Dolphins, you've been having some significant money issues... tell us, is it true that you are facing a foreclosure on the mansion you purchased on Long Island?

K. Lo: Well, it's really no secret. Everyone thought I was the one with all the money, but in reality, it was Caesar. So, I've had to be frugal. Thankfully, Eiben Tappendaht has been kind enough to help me make a couple monthly payments on the mansion until I get this whole

alimony thing worked out with Caesar. I executed a document saying I would pay him back out of the proceeds of the divorce settlement.

Misty:

QUESTION #3 – MAGNA CARTA:

Are there any ethical issues with an attorney financially helping a client in need until the money comes in?

Can the attorney just add the expenses as a “cost”? or can the client execute a letter of Protection to the attorney?

ANSWER #3:

Short answer: Not allowed

Source:

4 RULES OF PROFESSIONAL CONDUCT

4-1 CLIENT-LAWYER RELATIONSHIP

RULE 4-1.8 CONFLICT OF INTEREST; PROHIBITED AND OTHER TRANSACTIONS

(e) Financial Assistance to Client. A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

Comment:

Financial assistance

Lawyers may not subsidize lawsuits or administrative proceedings brought on behalf of their clients, **including making or guaranteeing loans to their clients for living expenses**, because to do so would encourage clients to pursue lawsuits that might not otherwise be brought and because such assistance gives lawyers too great a financial stake in the litigation.

REPORTER: (ending remarks.....)

Vignette # 2 – **CRIMINAL LAW**

Setting: Entertainment Tonight studio

Characters:

E T reporter –

Basketball star Kris Humfreeze -

Kris' lawyer

Realityity star Kim Kartrashian;

Celebrity attorney Gloria All-Green

Olympian and Kim's stepfather, Juice Jenner-

ET Reporter: Kris Humfreeze is our guest today. Mr. Humfreeze is accused of wrongdoing by his wife of 72 days, Ms. Kim Kartrashian. Mr. Humfreeze has been charged with stealing a one-of-a-kind, platinum toaster that was given to the couple as a wedding gift.

(Kris Humfreeze and his attorney walk on to the set.)

Lawyer: Let me handle this. We can't be here all day. This isn't a reality show. It's real life. You have an arraignment in the morning. Grand theft is no joke. It's a felony.

KH: Relax, man. I'm not going to have any felony on my record. My real name isn't even Kris Humfreeze!

Lawyer: Why did you tell me that?! Who are you?! What am I supposed to do now?!

QUESTION # 1 – GRAY'S INN:

What is an attorney's obligation upon discovering that a client who is a defendant in a pending criminal proceeding gave an alias when arrested, and proceedings have been brought under the alias? Should attorney reveal this information to the court and, if so, whether he or she must inform the court of the client's true identity?

ANSWER #1:

Short Answer: Client must either give true name or plead the 5th

The mere act of filing pleadings under the false name used by the client or responding to the alias when called at a docket sounding does not involve misrepresentation to the court. However, the lawyer cannot permit the client to lie and therefore, if asked, the client must give his or her true name or invoke a privilege in refusing to respond.

SOURCE:

Florida Bar Ethics Opinion, 90-6 (Reconsideration), May 29, 2009

Rule of Professional Conduct 4-3.3:(a) False Evidence; Duty to Disclose. A lawyer shall not knowingly:(1) make a false statement of material fact or law to a tribunal; (2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client[.]

See also, Rule 4-1.2(d) prohibits a lawyer from assisting a client in criminal or fraudulent conduct, while Rule 4-8.4(c) prohibits a lawyer from "dishonesty, fraud, deceit, or misrepresentation."

Reporter: Thanks for taking the time to come on our show, Kris. I know you aren't used to cameras, but this is your chance to set the record straight and tell your side of the story.

KH: First of all, I do not have a toaster anywhere in my sprawling mansion. Secondly, my "wife" (use air quotes) doesn't even know how to make toast!

(Enter Kim Kartrashian and her attorney Gloria All-Green)

Kartrashian: What?! I gave you the best 72 days of my life and this is what I get in return?! I'm here to tell my side of the story with my attorney, Gloria All-Green. Gloria, tell him!!

Gloria: I'm going to call a press conference about this travesty of justice! That's what I'm going to do!

(Enter Juice Jenner)

Jenner: (says to KK and Gloria) I know Kris has that gaudy toaster in his mansion. I ran all the way there last night and put it in his kitchen myself! I'm going to tell the judge exactly where it is tomorrow morning at Kris' arraignment.

Gloria: What did you say?!

Jenner: I'll run over right now and show the cops exactly where I left it. Don't worry, I wore gloves.

QUESTION #2 – LINCOLN INN:

Does a criminal defense attorney have an ethical obligation to tell a potential witness in his client's case that testimony he provides may incriminate himself and that he should seek legal advice?

Short Answer – NO

ANSWER:

The criminal defense attorney has the right, but not the duty, to tell the witness to seek legal advice, either on his own initiative or when asked by the witness. If the attorney feels that he would be doing his own client a disservice by making such a suggestion, then the attorney should not make the suggestion, or, if asked, should state only that he cannot discuss the matter with the witness.

Source:

Fla. Bar Ethics Opinion, 75-44, June 14, 1977

Lawyer: This isn't looking good for you, Kris. Gloria All-Green *AND* Juice Jenner?! That's a lot of star power coming after you.

KH: Between the NBA lockout and doing potential jail time, I'm outta here! Greece, here I come!

Lawyer: What? Your arraignment is tomorrow morning!

KH: Forget about it, man! Peace out.

QUESTION #3 – Carbolic Smokeball:

Does a criminal defense attorney who hears that his or her client has left the state for the purpose of avoiding a court appearance required to divulge such information to the court at the time of the scheduled appearance?

Short Answer: NO

ANSWER:

For an attorney, based on anything less than verified and certain facts, to tell the court a client is out of state for purpose of avoiding a court appearance, would violate the attorney's obligation to give that client zealous representation, would destroy the attorney-client relationship, and would be unethical.

SOURCE:

Fla. Bar Ethics Opinion, 90-1, July 15, 1990 (if some of the information counsel has is privileged, counsel may tell the court what information counsel has that is not privileged, and then advise the court that counsel does have additional information but believes it privileged and so invokes that privilege on the client's behalf- leaving it up to the court to make such further inquiry and such rulings on the extent of the privilege as it deems necessary)

Vignette # 3 – CIVIL LAW

Actors:

Carol = Mary Hart

Mike = Charlie Sheen

Scott = Dr. Drew

Nicole = Moderator, asks questions and gives possible answers

Scene 1: “Entertainment Tonight” airs with Mary Hart in front of the camera and show is about to air.

MH: Background on Charlie Sheen termination from CBS happened in last week. He threatened to sue CBS. “Today we caught him exiting the CBS headquarters and he had a few things to say with his lawyer present.”

CS: I deserve more money than they wanna give me. I say it's \$3 million an episode, take it or leave it ... I mean, look what they put me through. ... I'm underpaid right now. Look at the money they're making off of me - it's ridiculous. These CBS punks are trolls. I'm a Warlock and I'm invincible. A couple days before the suits rolled in to fire me I probably took more drugs than anybody could survive. I was banging seven-gram rocks, because that's how I roll. I have one speed. I have one gear: Go.

MH: CBS responded to this [unusual and odd behavior] statement by saying in a public statement that Sheen is obviously crazy.

CIVIL VIGNETTE -- QUESTION #1 – INNER TEMPLE:

What are an attorney’s ethical duties in dealing with a client, like Charlie Sheen, who may have diminished capacity because of mental illness and/or substance abuse and may lack competence to make decisions about important matters relating to the representation?

ANSWER #1:

Under Rule 4-1.14, Florida Rules of Professional Conduct, dealing with clients under a disability, the attorney must, as far as reasonably possible, maintain a normal client relationship with Sheen. If the attorney reasonably believes that Sheen is incapable of adequately acting in his own interest, because of mental health or substance abuse problems, the attorney may seek the appointment of a guardian for Sheen or “take other protective action.” The attorney may seek guidance from “an appropriate diagnostician.”

Rule 4-1.14. Client under a disability

(a) Maintenance of Normal Relationship. When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) Appointment of Guardian. A lawyer may seek the appointment of a guardian or take other protective action with respect to a client only when the lawyer reasonably believes that the client cannot adequately act in the client's own interest.

COMMENT

The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a mental disorder or disability, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. . . . [T]o an increasing extent the law recognizes intermediate degrees of competence. . . .

The fact that a client suffers a disability does not diminish the lawyer's obligation to treat

the client with attention and respect. If the person has no guardian or legal representative, the lawyer often must act as de facto guardian. . . .

If a legal representative has not been appointed, the lawyer should see to such an appointment where it would serve the client's best interests. . . . In many circumstances, however, appointment of a legal representative may be expensive or traumatic for the client. Evaluation of these considerations is a matter of professional judgment on the lawyer's part.

Disclosure of client's condition

Rules of procedure in litigation generally provide that minors or persons suffering mental disability shall be represented by a guardian or next friend if they do not have a general guardian. However, *disclosure of the client's disability can adversely affect the client's interests. The lawyer may seek guidance from an appropriate diagnostician.*

See also S.K. v. Department of Children and Families, 959 So. 2d 1209 (Fla. 4th DCA 2007)(explaining that “unless the client is completely unable to express and act in his own interest, the attorney can continue to represent him. When the client cannot adequately act in his or her own interest, the lawyer [should seek] the appointment of a guardian.)

Scene 2: Green room with Dr. Drew, Sheen and Attorney. Dr. Drew leans in to Attorney and (in a private kind of way) starts to disclose information. But it's unclear if Charlie is listening (or even has the wherewithal to understand).

CS: [into space, not specifically directed toward anyone] Need more of those signed prescription pads!!

DD: [Looks at attorney] So how is everything going now that you and B are in practice together? I've been meaning to run something by you. Did you know your partner, B, represented me a few years ago when I got divorced? Anyway, that's beside the point, what I want to ask you is if I should discuss an issue I have with Charlie. I felt sorry for Charlie because he was having a rough night when he got fired from CBS – I gave him a pad of signed prescriptions and told him what to get himself and I trusted he would get what I told him to.

CS: CBS calls me crazy? PUHHHLEASE!!! I'm so sane, I've cured myself! Rehab and AA don't work, I have tiger blood. I clean up on my own. In fact, I simply closed my eyes and made it so! With the power of my mind. I know my own truth. My partying days may not be over ... drugs and alcohol WORK! They change the way you see things, the way you feel. THANKS FOR THE SCRIPTS, DOC!

DD: So, attorney, I'm a little concerned... I'm going to talk to B about this... what do you think?

Atty: Wait a minute... What did you just say?

MH: (busts into the green room and declares) Thirty seconds to air!!! GET YOURSELVES TOGETHER PEOPLE!

QUESTION # 2 – INNER TEMPLE:

What ethical issues does this situation raise for Charlie's attorney – having Dr. Drew, his expert witness who is a former client of his law partner, confiding in him that he has provided Charlie with a signed pad of prescriptions and asking his advice?

Specifically, would it be unethical for Charlie's attorney to continue using Dr. Drew as an expert witness to testify that Charlie does not have a substance abuse or mental health problem that would interfere with his job duties on the show?

ANSWER #2

Rule 4-3.3. Candor Toward the Tribunal

(a) False Evidence; Duty to Disclose. *A lawyer shall not knowingly:*

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

* * *

(4) *offer evidence that the lawyer knows to be false. A lawyer may not offer testimony that the lawyer knows to be false in the form of a narrative unless so ordered by the tribunal. If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.*

(b) Criminal or Fraudulent Conduct. A lawyer who represents a client in an adjudicative proceeding and *who knows that a person intends to engage, is engaging, or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.*

* * *

(d) Extent of Lawyer's Duties. The duties stated in this rule continue beyond the conclusion of the proceeding and *apply even if compliance requires disclosure of information otherwise protected by rule 4-1.6.*

Scene 3: Back to green room, attorney says WAIT! We aren't ready.... Looks at Charlie and has some questions.

Atty: Look at me Charlie, I have some questions.... Is this true? What Dr. Drew just said?

CS: Don't worry about it. I have tiger blood. Keep your mouth shut about this. I gotta pick up my sanity drugs on my way to get my kids... You know I have custody of them, right? If you do anything to screw that up, I will TAKE YOU DOWN! Just like the Network...

QUESTION #3 – MAGNA CARTER:

What are the attorney's ethical duties knowing that Charlie has the signed prescriptions and is going by the pharmacy on the way to pick up his young children?

ANSWER #3

Question #3 implicates at least three Rules of Professional Conduct: (1) Rule 4-1.6, governing confidentiality of client information; (2) Rule 4-2.1, dealing with the attorney's duties as an adviser; and (3) Rule 1-1.4, dealing with a client under a disability.

Rule 4-1.6. Confidentiality of Information

(a) Consent Required to Reveal Information. A lawyer shall not reveal information relating to representation of a client except as stated in subdivisions (b), (c), and (d), unless the client gives informed consent.

(b) When Lawyer Must Reveal Information. A lawyer shall reveal such information to the extent the lawyer reasonably believes necessary:

(1) to prevent a client from committing a crime; or

(2) to prevent a death or substantial bodily harm to another.

* * *

(e) Limitation on Amount of Disclosure. When disclosure is mandated or permitted, the lawyer shall disclose no more information than is required to meet the requirements or accomplish the purposes of this rule.

COMMENT

Disclosure adverse to client

The confidentiality rule is subject to limited exceptions. In becoming privy to information about a client, a lawyer may foresee that the client intends serious harm to another person. However, to the extent a lawyer is required or permitted to disclose a client's purposes, the client will be inhibited from revealing facts that would enable the lawyer to counsel against a wrongful course of action. While the public may be protected if full and open communication by the client is encouraged, several situations must be distinguished. . . .

[T]he lawyer may learn that a client intends prospective conduct that is criminal. As stated in subdivision (b)(1), the lawyer shall reveal information in order to prevent such consequences. It is admittedly difficult for a lawyer to “know” when the criminal intent will actually be carried out, for the client may have a change of mind.

Subdivision (b)(2) contemplates past acts on the part of a client that may result in present or future consequences that may be avoided by disclosure of otherwise confidential communications. Rule 4-1.6(b)(2) would now require the attorney to disclose information reasonably necessary to prevent the future death or substantial bodily harm to another, even though the act of the client has been completed.

The lawyer's exercise of discretion requires consideration of such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the lawyer's own involvement in the transaction, and factors that may extenuate the conduct in question. Where practical the lawyer should seek to persuade the client to take suitable action. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to the purpose.

Rule 4-2.1. Adviser

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.

COMMENT

Scope of advice

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.*

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. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral adviser as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied. . . .*

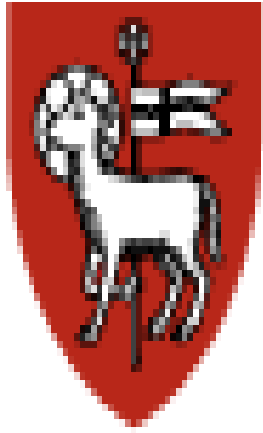
Offering advice

In general, a lawyer is not expected to give advice until asked by the client. However, *when a lawyer knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client, the lawyer's duty to the client under rule 4-1.4 may require that the lawyer offer advice if the client's course of action is related to the representation. . . .*

Rule 4-1.14. Client under a disability

(a) Maintenance of Normal Relationship. When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) Appointment of Guardian. A lawyer may seek the appointment of a guardian *or take other protective action with respect to a client only when the lawyer reasonably believes that the client cannot adequately act in the client's own interest.*



Middle Temple



Family Law segment

- **Q#1:**
- **Does an attorney representing a party in a divorce owe any responsibilities to the children of the divorce, i.e., when the party being represented says they do not really care for the children, but just want custody in order to get more financial support from the other party?**

A#1:

- **Rules 4-1.2;4-1.3; 4-1.16; 4-2.1;
AAML**
- **Ethically no; morally, yes**
- **Ethically, the duty is to abide by the client's objectives if not illegal,**
 - **EXCEPT for the duty to advise and**
 - **the right to withdraw.**

Duty to the Children

American Academy of Matrimonial Lawyers

BUT SEE - The American Academy of Matrimonial Lawyers' "aspirational" code of conduct:

- **7.1.** An attorney representing a parent should consider the welfare of the minor children and seek to minimize the adverse impact of the family law litigation on them.
- **7.2.** An attorney should not permit a client to contest parental responsibility or contact and access for either financial leverage or vindictiveness.

Q #2: Sexy Time

- **What ethical issues arise with an attorney having a sexual relationship with a client once the representation has commenced?**

A#2: Client Sex is Not Safe Sex

Rule 4-8

1. Adverse effect on client's interests
 - Adverse effect on clients' interests
 2. Interference with lawyer's independent judgment
- *Post engagement engagement = presumption of adverse effect on client interests

Q#3: Financial Assistance to a Client

\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$

- **May an attorney provide financial help to a client in need until the money comes in from the case?**
- **May the attorney just add the expenses as a “cost”?**
- **May the client execute a letter of Protection to the attorney?**

A#3: NOPE!

- ***RULE 4-1.8 CONFLICT OF INTEREST; PROHIBITED AND OTHER TRANSACTIONS***
- **(e) Financial Assistance to Client.** A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:
 - (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and
 - (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

Q#1: Criminal Law segment

- *What are a criminal defense attorney's obligations, if any, upon discovering that a Defendant he/she represents gave an alias when arrested, and proceedings have been brought under the alias? Should attorney reveal this information to the Court and, if so, whether he or she must inform the court of the client's true identity?*

A#3:Short Answer

Rule 4-3.3

- Either give the correct name or plead the 5th
- Can't undertake false representation

Question # 2

- **QUESTION # 2**
- *Does a criminal defense attorney who learns that his or her client has left the state for the purpose of avoiding a court appearance required to divulge such information to the court at the time of the scheduled appearance?*

Answer # 2 No

EO 90-1

- For an attorney, based on anything less than verified and certain facts, to tell the court a client is out of state for purpose of avoiding a court appearance, would violate the attorney's obligation to give that client zealous representation, would destroy the attorney-client relationship, and would be unethical.
- Source:
- Fla. Bar Ethics Opinion, 90-1, July 15, 1990.

Question # 3

- *Does a criminal defense attorney have an ethical obligation to tell a potential witness in his client's case that testimony he provides may incriminate himself and that he should seek legal advice?*

Answer # 3 - No

- Answer:
- The criminal defense attorney has the right, but not the duty, to tell the witness to seek legal advice, either on his own initiative or when asked by the witness. If the attorney feels that he would be doing his own client a disservice by making such a suggestion, then the attorney should not make the suggestion, or, if asked, should state only that he cannot discuss the matter with the witness.
- Source:
- Fla. Bar Ethics Opinion, 75-44, June 14, 1977

Q#1: Civil Law

- **What are an attorney's ethical duties in dealing with a client, like Charlie Sheen, who may have diminished capacity because of mental illness and/or substance abuse and may lack competence to make decisions about important matters relating to the representation?**

A # 1

- **Rule 4-1.14, ... the attorney must, as far as reasonably possible, maintain a normal client relationship with Sheen.**
- **If the attorney reasonably believes that Sheen is incapable of adequately acting in his own interest ...the attorney may seek the appointment of a guardian for Sheen or “take other protective action.” The attorney may seek guidance from “an appropriate diagnostician.”**

Civil Q# 2

- **What ethical issues does this situation raise for Charlie's attorney – having Dr. Drew, his expert witness who is a former client of his law partner, confiding in him that he has provided Charlie with a signed pad of prescriptions and asking his advice?**
- **Specifically, would it be unethical for Charlie's attorney to continue using Dr. Drew as an expert witness to testify that Charlie does not have a substance abuse or mental health problem that would interfere with his job duties on the show?**

A # 2

- **Rule 4-3.3. Candor Toward the Tribunal**
- ***A lawyer shall not knowingly***
 - ***make or fail to correct a false statement***
 - Fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;
- ***(4) offer evidence that the lawyer knows to be false.***
- ***(b) shall take reasonable measures to stop or prevent criminal or fraudulent conduct related to the proceeding , including disclosure to the tribunal***

Civil Q # 3:

- **What are the attorney's ethical duties knowing that Charlie has the signed prescriptions and is going by the pharmacy on the way to pick up his young children?**

Civil Answer # 3

- **At least three Rules of Professional Conduct:**
- **(1) Rule 4-1.6, governing confidentiality of client information;**
- **(2) Rule 4-2.1, dealing with the attorney's duties as an adviser; and**
- **(3) Rule 1-1.4, dealing with a client under a disability.**