

# PRESIDENT'S MESSAGE

## “Counselors At Law:” The Intriguing Second Half of Our Job Titles

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**For as long as I have practiced law, I have used the terms “attorney” and “counselor” interchangeably. I’ve even reviewed transcripts of depositions I’ve taken where, within a series of questions, I’ve veered back and forth between the two, referring to “your attorney sitting next to you” one minute, while promising to avoid invasion of the “advice of counsel” the next.**

Yet, I’ve often wondered whether there was a difference between these terms. I mean, why would there be two names for the licensed positions we hold, when the first one – “attorney” – conveys the essence of who we are, all at once?

Yet, if you look at the legislative and rule-based sources for our profession (Chapter 7 of the Nevada Revised Statutes and Nevada Supreme Court Rule 40), they both reference “Attorneys and Counselors at Law.” If there is one thing I’ve learned as a litigator, it is that legislative- and rule-based word choices are rarely

accidental. So, if the State of Nevada meant for these terms to be used interchangeably, we would be all one or all the other. Hence, the “counselor” portion of our job titles must have a stand-alone meaning, right?

Turns out, it does. Obviously, the “counselor” side of things refers to our role in providing legal advice to clients and helping them work through various options in a given situation to appreciate risks and arrive at their most advantageous outcome. Yet, as I have learned through some research, there’s much more to it. Nevada Rule of Professional Conduct (NRCP) 2.1 (which mirrors ABA Model Rule of Professional Conduct 2.1) states, under the heading of “Advisor” that “... 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 ...”

This language, while brief, seems to have huge implications for the role that we are expected to play as “counselors at law.” Reading between the lines, the NRCP contemplates that the “counseling” that we are to provide to clients involves factors completely unrelated to the application of laws, cases, and regulations to a set of facts. Moral, economic, social, and political factors? Wow – this almost sounds like

we are asked to be counselors in the “mental health” sense of that term, or that we are somehow *de facto* social workers. Perhaps this interpretation isn’t too far from the truth. Fortunately, the ABA’s Comment to Rule 2.1 does provide some context here, stating, in part:

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 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. *Family matters can involve problems within the professional competence of psychiatry, clinical psychology or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists.*

Comment to ABA Model Rule of Professional Conduct 2.1, §§2, 4 (emphasis added.)

Putting all this together, the point appears to be that we are not meant to counsel our clients “in a vacuum.” I take from this that when we work with a client and they place a problem or a consequential decision on our desk and say, in essence, “tell me what to do,” our ethical duties go well beyond applying laws to facts and discussing likely outcomes. These rules and comments

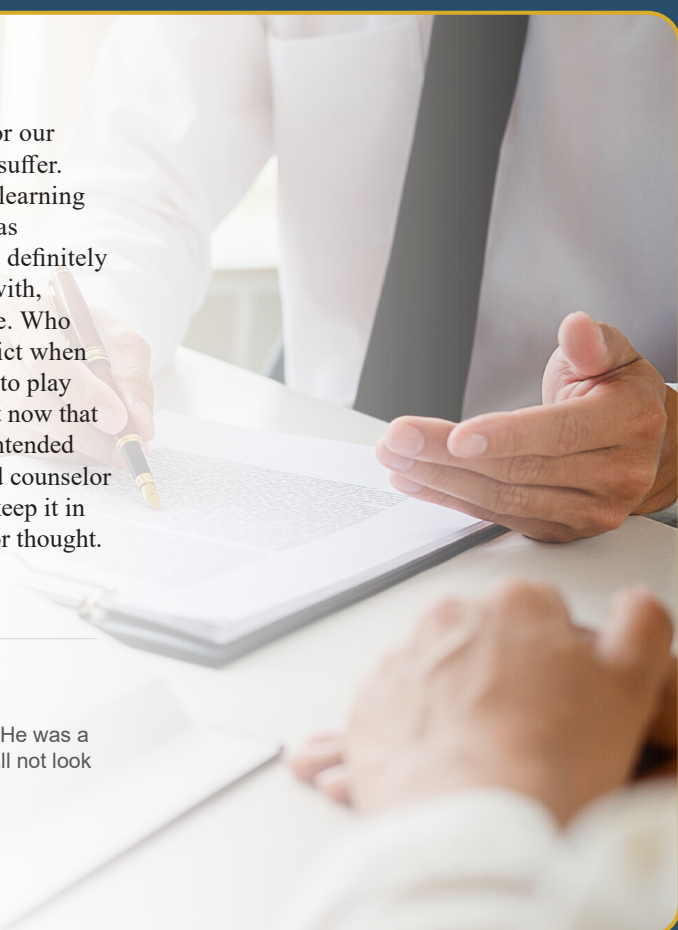
seem to be saying that when we counsel our clients, we must take them “for all in all,” as Shakespeare put it.<sup>1</sup> It falls to us, in our capacities as “counselors,” to incorporate the complexities of life into the advice we provide (e.g., What is the right thing for this client, ethically? Morally? Financially? Medically?) In “real world” terms, this makes perfect sense. It feels like the role of “counselor at law” was intended to merge the academic and the practical so that we look past the mechanics of legal practice and consider, however briefly, our client’s “whole picture” as we advise them.

Of course, most of the time, the counseling that we provide never has these other dimensions to it. Often, decisions as to whether to file a lawsuit or accept a settlement offer (as examples) do not have these non-legal considerations attached to them. For that, I can say that I am personally grateful. Not every bit of advice we

give must be so momentous, or our effectiveness would certainly suffer. However, in looking at it and learning more about our intended role as “counselor,” this exercise will definitely inform how I select, interact with, and advise clients in the future. Who knows? Can I accurately predict when these extra issues will come into play in my practice? Likely not. Yet now that I am aware of this additional intended dimension to our “attorney and counselor at law” job titles, I will try to keep it in mind as I practice. Just food for thought.

**ENDNOTE:**

1. William Shakespeare, *Hamlet*, “He was a man, take him for all in all, I shall not look upon his like again ...”



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