



## Alerts

### Judicial Error Doctrine Rejected as a Defense to Malpractice Claim Because Attorneys Failed to Appeal the Judgment in the Underlying Litigation

September 19, 2019

*Lawyers for the Profession®*

*American Inter-Fidelity Exchange v. Hope, et. al.*, (N.D. Illinois 17 C 7934)

#### Brief Summary

A federal district court in Illinois held that defendants, who were sued for malpractice after a default judgment was entered against their client in underlying litigation, cannot invoke judicial error as an intervening, superseding cause breaking the chain of causation in circumstances where the defendant lawyers could have, but elected not to, appeal the allegedly erroneous judgment.

#### Complete Summary

After a car accident, Joseph Hope sued Iurii Rypninskyi to recover for injuries he sustained. American Inter-Fidelity Exchange ("AIFE"), Rypninskyi's insurer, retained Cassidy Schade, LLP ("Cassiday") to defend him.

Rypninski failed to cooperate and appear at trial. The court issued an evidentiary sanction against him for not appearing. The trial court then found that Cassiday violated the sanction order, and as a result, the court entered a default judgment against Rypninskyi as to liability. The jury later awarded damages to Hope in the sum of \$400,000. Cassiday chose not to file an appeal.

AIFE then filed a declaratory judgment action in federal court seeking a finding that it owed no duty to indemnify Rypninskyi because of his failure to appear for trial. Rypninskyi then filed a third-party claim against Cassiday for legal malpractice, contending that its errors and omissions caused both his non-appearance at trial and the ensuing adverse judgment.

Cassiday moved for summary judgment, arguing that the judgment against Rypninskyi was proximately caused not by its professional negligence, but by the state court's error in granting the default judgment on liability. This error by the court, according to Cassiday, was an intervening cause which broke any causal connection between its alleged negligence and Rypninskyi's injury as a matter of law.

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The court rejected Cassiday's position and denied its motion. In the court's view, an attorney accused of negligence who does not appeal a judgment the attorney contends resulted from judicial error, cannot then use judicial error as a defense to the malpractice claim. The court did note that the filing of an appeal is not a blanket requirement before invoking judicial error as a defense; in fact, where the failure to appeal an erroneous judgment is not the attorney's doing, the attorney bears no responsibility for the harm to the client. The court concluded by stating: "because Cassiday Schade was responsible for failing to appeal, its contention that this court must decide that the judgment would have been reversed on appeal—if only an appeal had been filed—boils down to the nonsensical proposition that it cannot be held liable for trial malpractice in state court because it decided not to appeal."

## Significance of the Case

Courts have held that a trial court's error in the underlying litigation may constitute a superseding, intervening, cause of plaintiff's claimed damages in legal malpractice actions, relieving the attorney of liability. *See, e.g., Green v. Papa*, 2014 IL App (5th) 130029; *Huang v. Brenson*, 2014 IL App (1st) 123231. Here, however, the court rejected the judicial error doctrine seemingly on the basis that the defendants were at least partially at fault for the trial court's alleged error and they, as opposed to the client, failed to appeal the erroneous judgment.

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