



Alerts

Lawyer Suspended for Representing Ward and Conservator

January 12, 2010

Lawyers for the Profession® Alert

In re Wyatt's Case, 982 A.2d 396 (N.H. Sup. Ct. 2009)

Brief Summary

The New Hampshire Supreme Court suspended an attorney for two years for violating the conflict of interest rules in his representation of a ward and the ward's conservator, and for acting adversely to the ward by aiding others in seeking a guardianship over him. After ceasing to represent the ward, the attorney also violated the former client conflicts rule by continuing to pursue the guardianship.

Complete Summary

Attorney Donald Wyatt represented David Stacy on personal matters. At Mr. Stacy's request, Wyatt also represented Mr. Stacy's conservatorship estate, which was managed by Wyatt's friend, Michel Brault. After Mr. Stacy's wife, Svetlana, alerted Wyatt and Brault to Mr. Stacy's potential mental health issues, Wyatt advised Svetlana and Brault to seek a limited guardianship but did not discuss the guardianship with Mr. Stacy.

Although Brault and Svetlana retained independent counsel to initiate the guardianship proceeding, Wyatt continued to advise them on the matter. The probate court eventually appointed counsel to replace Wyatt in representing Mr. Stacy, but Wyatt continued to represent Mr. Stacy's conservatorship estate. Mr. Stacy eventually challenged Brault's management of the conservatorship, including the legal fees he paid to Wyatt.

The New Hampshire Supreme Court found multiple conflicts violations. First, Wyatt violated Rule of Professional Conduct ("RPC") 1.7(b) by simultaneously representing a conservatee (Mr. Stacy) and a conservator (Brault). Wyatt argued that this conflict was not possible given the doctrine of primary and derivative clients, which requires the lawyer of a fiduciary to further the fiduciary's legal obligations to the beneficiary. The court disagreed.

The court also found Wyatt in violation of RPC 1.7(a), which prohibits directly adverse representations, by representing Brault and Svetlana in the guardianship matter while Wyatt was still representing Mr. Stacy on personal matters. Wyatt argued that his conduct was permissible under RPC 1.14, which allows a lawyer to seek appointment of a guardian for a client if the lawyer reasonably believes the client cannot act in the client's own interest. The court held that this rule only permits the attorney to seek a guardianship directly and

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not to aid third-parties (Brault and Svetlana, in this case) who seek a guardianship.

The court then held that Wyatt violated RPC 1.9(a) regarding former client conflicts on two occasions: first, by continuing to represent Brault as conservator in the guardianship matter without Mr. Stacy's consent after ceasing representation of Mr. Stacy, and second by representing Brault against Mr. Stacy's challenges to Brault's management of the conservatorship.

Although the baseline sanction for such conduct was disbarment, the court instead suspended Wyatt for two years based on mitigating factors. Wyatt had an excellent reputation among judges and fellow attorneys, had no disciplinary record, had expressed remorse and apologized, and was open and cooperative with the Bar. A further mitigating factor was the fact that the proceeding was delayed through no fault of Wyatt.

Significance of Opinion

The existence of a conflict in the context of guardianships or conservatorships is not always obvious. This opinion clarifies that even if only one person's interests are ultimately at stake, severe conflicts may still be present.

This alert has been prepared by Hinshaw & Culbertson LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.