

SUPREME COURT OF NEW HAMPSHIRE

Clauson's Case

164 N.H. 183 (2012) · Decided September 18, 2012

SUMMARY

The New Hampshire Supreme Court reviewed a six-month suspension imposed on attorney K. William Clauson for alleged violations of professional-conduct rules arising from his joint representation of a criminal defendant and the defendant's wife in proceedings to lift a no-contact bail condition. The court upheld violations of Rules 1.7 and 8.4(a), rejected findings under Rules 1.1 and 1.9(a), and vacated and remanded the sanction for reconsideration.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Lynn, J.; Dalianis, C.J.; Hicks, J.; Conboy, J.
JURISDICTION	New Hampshire
DECIDED	September 18, 2012
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Attorney disciplinary appeal from an order of the Supreme Court Professional Conduct Committee suspending the respondent from practicing law for six months.
STANDARD OF REVIEW	The PCC's finding of a violation must be supported by clear and convincing evidence. The court defers to the PCC's factual findings when supported by the record, but retains ultimate authority to determine whether the facts establish a violation and what sanction should be imposed.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	K. William Clauson v. Supreme Court Professional Conduct Committee

TOPICS

appellate procedure

standard of review

right to counsel

bail

criminal procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Clauson's joint representation of Todd and Brenda Gray created a concurrent conflict of interest in violation of New Hampshire Rule of Professional Conduct 1.7(a)(2).
2. Whether Clauson's representation of Todd constituted a successive conflict of interest under Rule 1.9(a).
3. Whether clear and convincing evidence established that Clauson provided incompetent representation in violation of Rule 1.1.
4. Whether Clauson's Rule 1.7(a) violation also constituted professional misconduct under Rule 8.4(a).
5. Whether the six-month disciplinary sanction should be vacated and reconsidered after reversal of two of the four violations.

HOLDINGS

1. Clauson's joint representation of Todd and Brenda Gray at the bail-condition hearings presented a significant risk that his responsibilities to Brenda would materially limit his representation of Todd, establishing a concurrent conflict of interest under Rule 1.7(a)(2).
2. Because Clauson violated Rule 1.7(a), he also violated Rule 8.4(a), which defines violation of the Rules of Professional Conduct as professional misconduct.
3. The record did not establish by clear and convincing evidence a violation of Rule 1.9(a), because Brenda Gray's interests were not materially adverse to Todd Gray's interests during the relevant representation.
4. The PCC lacked clear and convincing evidence that Clauson violated Rule 1.1 by representing the Grays in seeking modification of the no-contact condition.
5. The six-month suspension had to be vacated and remanded for reconsideration because the PCC based it on four violations, while only the Rule 1.7(a) and Rule 8.4(a) violations were sustained.

KEY QUOTATIONS

“In attorney discipline matters, we defer to the PCC’s factual findings if supported by the record, but retain ultimate authority to determine whether, on the facts found, a violation of the rules governing attorney conduct has occurred and, if so, what the sanction should be.” (187)

“Rule 1.9 refers not to possibilities but to actual adverse interests.” (192)

“We cannot be confident that the PCC’s sanction would have been the same had it correctly recognized the extent of his violations of the Rules.” (195)

FACTUAL BACKGROUND

K. William Clauson represented both Brenda Gray and her husband, Todd Gray, in efforts to lift a no-contact condition imposed as part of Todd's bail following his arrest for assault involving Brenda and their daughter. Clauson appeared with Brenda at two bail-condition hearings and also represented Todd, entering a not-guilty plea for him at the second hearing. Brenda supported lifting the no-contact condition, although the police

investigation contained evidence that Todd had assaulted her and that she might later become a prosecution witness.

PROCEDURAL HISTORY

The Attorney Discipline Office charged Clauson with violating New Hampshire Rules of Professional Conduct 1.7(a), 1.9(a), 1.1, and 8.4(a). A hearing panel found all four violations and recommended a three-month suspension and additional requirements. The Professional Conduct Committee also found all four violations, imposed a six-month suspension, and required completion of an MPRE course and passage of the examination. Clauson appealed to the Supreme Court of New Hampshire, which affirmed the Rule 1.7 and Rule 8.4(a) violations, reversed the Rule 1.9(a) and Rule 1.1 findings, vacated the sanction, and remanded for reconsideration.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The sanction is vacated and the matter is remanded to the Supreme Court Professional Conduct Committee to reconsider the appropriate sanction based only on the sustained violations.

CASES CITED

- Clark's Case, 163 N.H. 184, 187-88 (2012)
- Wyatt's Case, 159 N.H. 285, 298 (2009)
- Holloway v. Arkansas, 435 U.S. 475, 490 (1978)
- Barefield v. DPIC Companies, Inc., 600 S.E.2d 256, 269 (W. Va. 2004)
- In re O'Brien, 26 A.3d 203, 209 (Del. 2011)
- Attorney Grievance v. Gisriel, 974 A.2d 331, 351-52 (Md. 2009)
- In re Richmond's Case, 152 N.H. 155, 158 (2005)
- State v. Kidder, 150 N.H. 600, 603 (2004)

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