SUPREME COURT OF NEW HAMPSHIRE

Lane's Case

153 N.H. 10 (2005) · Decided December 28, 2005

SUMMARY

The New Hampshire Supreme Court reviewed professional-conduct charges against attorney Kendall W. Lane arising from his disclosure of information concerning a former client's estate and trust matters. The court applied the version of New Hampshire Rule of Professional Conduct 1.9 in effect in 1996, held that the disciplinary committee proved a violation relating to disclosure of life-insurance information unless justified under Rule 1.6, and considered whether Lane reasonably believed disclosure was necessary to prevent financial harm or criminal conduct.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Galway, J.; Broderick, C.J.; Dalianis, J.; Duggan, J.; Nadeau, J.
JURISDICTION	New Hampshire
DECIDED	December 28, 2005
DISPOSITION	denied
PROCEDURAL POSTURE	Attorney-discipline proceeding in which the Supreme Court Committee on Professional Conduct petitioned for a six-month suspension. A judicial referee found that the committee failed to prove misconduct by clear and convincing evidence; the Supreme Court reviewed the referee's report.
STANDARD OF REVIEW	The court defers to the referee's factual findings when supported by the record and reviews them to determine whether a reasonable person could reach the same conclusion. The court reviews de novo whether the referee committed an error of law and retains ultimate authority to determine whether the facts establish a professional-conduct violation and the appropriate sanction.
PRECEDENTIAL VALUE	Published New Hampshire Supreme Court opinion; precedential.
PARTIES	Supreme Court Committee on Professional Conduct v. Kendall W. Lane

TOPICS

insurance · probate · trust administration · estate administration

PRACTICE AREAS

legal ethics and professional responsibility · attorney discipline · probate · trusts · insurance

QUESTIONS PRESENTED

1. Whether Lane violated former New Hampshire Professional Rule of Conduct 1.9(b) by giving an attorney a copy of an estate accounting.
2. Whether Lane violated Rule 8.4(c) by stating to John Hancock that his firm represented Robert Bennett's estate.
3. Whether Lane violated former Rule 1.9(b) by disclosing evidence of the John Hancock life-insurance policy and proceeds to an attorney adverse to his former client.
4. Whether the disclosure of the life-insurance evidence was permitted under Rule 1.6(b), and which party bore the burden and level of proof on that exception.
5. Whether Rule 3.3(a)(3) or RSA 311:6 independently authorized Lane's disclosure.

HOLDINGS

1. The committee failed to prove by clear and convincing evidence that Lane used information relating to the former representation to the disadvantage of Dick Bennett or the estate.
2. The committee failed to prove by clear and convincing evidence that Lane intentionally made a false or misleading representation in violation of Rule 8.4(c).
3. Lane used information relating to his former representation of Dick Bennett to Dick Bennett's disadvantage, thereby establishing a Rule 1.9(b) violation unless the disclosure was authorized by Rule 1.6.
4. The attorney asserting a Rule 1.6 exception to former Rule 1.9(b) bears the burden of proving the exception by a preponderance of the evidence.
5. Lane proved by a preponderance of the evidence that Rule 1.6(b) permitted the disclosure because he reasonably believed it necessary to prevent future criminal activity likely to cause substantial injury to Jane Bennett's financial interests or property.
6. Rule 3.3(a)(3) did not apply because it was not an exception included in the version of Rule 1.9 applicable in 1996, and the court did not reach whether RSA 311:6 authorized the conduct because Rule 1.6(b) already justified the disclosure.

KEY QUOTATIONS

> *“In professional conduct matters, we defer to the referee’s factual findings if supported by the record, but retain the ultimate authority to determine whether, on the facts found, a violation of the rules governing attorney conduct has occurred and, if so, the appropriate sanction.”* (15)

> *“Accordingly, we hold that Lane was required to prove by a preponderance of the evidence the applicability of Rule 1.6 as an exception to Rule 1.9(b).”* (22)

> *“In light of the above facts, we conclude that Lane proved by a preponderance of the evidence the applicability of Rule 1.6(b) as an exception to Rule 1.9.”* (23)

FACTUAL BACKGROUND

Lane's firm represented the estate of Robert Bennett, whose estate was closed after a final accounting showed a net balance of zero. Years later, Lane learned that Robert Bennett had received accident and life-insurance proceeds that had not been disclosed in estate or trust accountings, including a $100,000 John Hancock payment deposited into a joint account of Jane Bennett and her son, Dick Bennett. Lane provided evidence of the life-insurance policy and deposit to an attorney representing Dick Bennett's sisters, who were involved in a dispute concerning Dick's administration of his mother's trust.

PROCEDURAL HISTORY

The committee filed a petition alleging violations of New Hampshire Professional Rules of Conduct 1.9 and 8.4(c). The matter was referred to a judicial referee, who found that the committee had not proved any violation by clear and convincing evidence. The Supreme Court reviewed the referee's factual findings and legal conclusions, rejected some of the committee's arguments, held that one disclosure violated former Rule 1.9(b) but was justified under Rule 1.6(b), and denied the petition.

DISPOSITION

denied

CASES CITED

- Shillen's Case, 149 N.H. 132, 136 (2003)
- Feld's Case, 149 N.H. 19, 22 (2002), cert. denied, 540 U.S. 815 (2003)
- Douglas' Case, 147 N.H. 538, 542-43 (2002)
- In re Doughty, 832 A.2d 724, 735 (Del. 2003)
- In re Clark, 87 P.3d 827, 830 (Ariz. 2004)
- Beery v. State Bar of California, 739 P.2d 1289, 1293-94 (Cal. 1987)
- In re Disciplinary Proc. Against Cohen, 82 P.3d 224, 230-31 (Wash. 2004) (en banc)
- Rodgers v. Commission for Lawyer Discipline, 151 S.W.3d 602, 615-16 (Tex. App. 2004), review denied (Mar. 11, 2005)