

SUPREME COURT OF NORTH DAKOTA

Gregory Ian Runge v. Disciplinary Board of the North Dakota
Supreme Court

Runge, 2015 ND 32 (N.D. 2015) · No. 20140135 · Decided February 12, 2015

SUMMARY

The North Dakota Supreme Court reviewed an admonition issued to attorney Gregory Ian Runge for allegedly violating North Dakota Rule of Professional Conduct 1.14 while assisting Norman Franz in revoking a power of attorney and leaving a nursing home. The Court held that the record did not clearly and convincingly establish Franz had limited capacity or that Runge violated Rule 1.14. The Court dismissed the disciplinary complaint.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Per Curiam; Gerald W. VandeWalle, Chief Justice; Daniel J. Crothers; Lisa Fair McEvers; Carol Ronning Kapsner; Dale V. Sandstrom
JURISDICTION	North Dakota
DECIDED	February 12, 2015
DOCKET	20140135
DISPOSITION	dismissed
PROCEDURAL POSTURE	Runge appealed a Disciplinary Board decision affirming an Inquiry Committee West determination that he violated North Dakota Rule of Professional Conduct 1.14 and should receive an admonition. The Supreme Court granted Runge leave to appeal and reviewed the informal disciplinary disposition de novo on the record.
STANDARD OF REVIEW	The Supreme Court reviews the substantive evidence and merits of an informal disciplinary disposition de novo on the record. A violation of the rules of professional conduct must be established by clear and convincing evidence.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Gregory Ian Runge v. Disciplinary Board of the North Dakota Supreme Court

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QUESTIONS PRESENTED

1. Whether clear and convincing evidence established that Runge violated N.D.R. Prof. Conduct 1.14 by preparing and witnessing Franz's revocation of a power of attorney without consulting Franz's appointed attorney-in-fact.
2. Whether the nursing home's emergency care statement and Franz's power of attorney gave Pfeifer sole authority to make Franz's medical decisions.
3. Whether Runge's due-process challenges to the informal disciplinary proceedings required reversal.

HOLDINGS

1. Clear and convincing evidence did not establish that Runge violated N.D.R. Prof. Conduct 1.14. After reasonably assessing Franz's capacity through telephone and in-person communications, Runge was not required to contact Pfeifer before Franz revoked the power of attorney.
2. Pfeifer's signature as a responsible party on the nursing home's emergency care statement did not give her sole authority to make Franz's medical decisions, and the document was ineffective as a medical power of attorney.
3. The court did not address Runge's due-process arguments because it dismissed the disciplinary complaint on the merits.

KEY QUOTATIONS

"Although Runge could have contacted Pfeifer before Franz executed the revocation of the power of attorney, N.D.R. Prof. Conduct 1.14 did not require him to contact her after ascertaining Franz's capacity." (§ 19)

FACTUAL BACKGROUND

Norman Franz executed a durable power of attorney appointing his daughter Rose Pfeifer to handle financial and property matters while expressly excluding medical and health-care decisions. After Franz suffered a heart attack and moved to a nursing home, attorney Gregory Runge spoke with Franz by telephone and in person, assessed his capacity, and prepared a revocation of the power of attorney at Franz's request so Franz could leave the facility. Pfeifer filed a disciplinary complaint alleging Runge acted improperly by preparing the revocation without consulting her or the nursing home. The record did not clearly and convincingly establish that Franz lacked capacity when he revoked the power of attorney.

PROCEDURAL HISTORY

After Runge prepared a revocation of a power of attorney for Norman Franz, Franz's daughter filed a disciplinary complaint. The Inquiry Committee West found a violation of Rule 1.14 and issued an admonition, and the Disciplinary Board affirmed. The Supreme Court granted leave to appeal, reviewed the merits de novo, dismissed the complaint, and declined to reach Runge's due-process arguments.

DISPOSITION

dismissed

CASES CITED

- Toth v. Disciplinary Board, 1997 ND 75, ¶ 10, 562 N.W.2d 744
- In re Disciplinary Action Against Hann, 2012 ND 160, ¶ 20, 819 N.W.2d 498
- Disciplinary Action Against Kuhn, 2010 ND 127, ¶ 20, 785 N.W.2d 195
- Estate of Littlejohn, 2005 ND 113, ¶ 7, 698 N.W.2d 923
- Disciplinary Action Against McKechnie, 2003 ND 22, ¶ 16, 656 N.W.2d 661

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