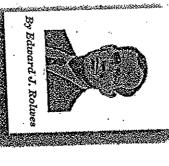
isky business: Attorney-Client Business Transactions

Overcoming the Presumption of Undue Influence is often difficult



good faith when they deal other at arm's length. who simply deal with each with a client than parties clients bear a heavy burden ness transactions with their stemmed from the lawyers tion that the transaction of overcoming the presump-Lawyers who enter into busiattorney should do business although not required, no area. As a practical matter, specific ethics rules in this and that they complied with exercise of undue influence with their client unless the client has independent coun-Aexercise a higher level of ttorneys are required to

neys who drafted a will or regarding attorney-client other instrument, such as a transactions involve attorand they are often attacked presumptively fraudulent transactions are considered erty to the attorney. These of undue influence. When from the attorney's exercise left some of the client's prop of law include Cuthbert v. challenged, the burden is on later on as having resulted (Mo. 1963), Flanagan v. DeLapp, 533 S.W.2d 592 and equitable. Missouri and convincing evidence that (Mo.banc 1976), and, more recently, In Re Estate of Mapes, 738 S.W.2d 592 the gift or bequest was fair the attorney to prove by clear Heidsieck, 364 S.W.2d 583 for the client which

In Cuthbert the attorney was a long time "trusted confidant" of Mabel Adams, (Mo.banc 1987) Adams informed the lawyer an 80 year old widow. lawyer, financial advisor and

Corporation. that she wished to give him 200 shares of U.S. Steel then assisted Mrs. even accompanied her to the with the transaction and certificates, paid the charges where to endorse the stock attorney exercised undue influence over Mrs. Adams widow's guardian sued to set for the transfer and picked broker's office to complete and confidential relationaside the gift, alleging the up the new certificates at the the transfer. He also told her broker's office. Later on the dent witnesses testified Mrs. ship." Even though indepenin breach of their "fiduciary ney "for all the things he had trial court set aside the gift done for her" over more than Adams had later informed and the appellate court fifteen years without pay, the ferred the stock to her attorthem that she had transaffirmed. The attorney Adams

ruling, the appellate court in Cuthbert emphasized that to assist with the transfer the attorney's active efforts In affirming the trial court

raised a presumption that over the client. Given this influence by the attorney the gift stemmed from undue dence to show the gift was of coming forward with evithe attorney had the burden specifically noted the record Adams secured and acted attorney's "position would be disinterested advice regarding the transfer of stock." fair and equitable. The court upon the advice of some commuch improved had Mrs. The court concluded that the Adams had independent and with the transaction." who was cognizant of all of petent disinterested person did not establish that Mrs. the circumstances connected

the gift; the transaction in additional basis to set aside Cuthbert would have an Noday a Missouri court rulor specified relatives of the Rule 4-1.8(c) rule bars attorof Professional Conduct. Cuthbert would violate Rule ments that give the attorney neys from preparing instru-4-1.8(c) of the Missouri Rules Ling on a similar case as

lawyer any substantial gift attorney's relative. exceptions are gifts from an tamentary gift. from a client, including a tesattorney in Cuthbert was not related to the widow the lated Rule 4-1.8(c). transaction would have vio-The only Since the

to gifts, not to other transactions. There is no blanket transactions with clients rule in Missouri barring safeguards that apply to are however some specific given by the attorney. There where some consideration is lawyers from entering into these types of transactions: Rule 4-1.8(c) only applies

an attorney and a client. ness, transactions between security or other pecuniary an ownership, possessory, business transaction with "lawyer shall not enter in Rule 4-1.8(a) states that a interest adverse to a client" client or knowingly acquire unless specific steps are Rule 4-1.8(a) governs busi-

To begin with, Rule 4.

See ROLWES; page 18A

Ad agog mort baunitno?

to these types of transacence that otherwise appiles -num angun jo uondumsaad attorney to overcome the nearly difficult for the si ii 'jesunoo auepuedepui that this be done. Absent even though no rule requires the time of the transaction, had independent advise at tocus on whether the chent in Cuthbert, courts tend to ney to likely discipline. As 1.8(a), subjecting the attortransaction violated Rule court may later conclude the erwise, there is a safe bet a regarding the matter. Othindependent legal advice the client actually obtains tionship with a client unless. enter into a business relamatter, no lawyer should Rule 4-1.8(a), as a practical In addition to following effort to show complishee.

than after the fact testimocarry more weight later on confirming letter will always pute, a contemporaneous with any other factual disrate counsel was given. As that the advice to seek sepaalways confirm in writing charge the lawyer should against an undue influence Nonetheless, to protect 67807 S (Jul. 23, 1997). (See, e.g.Hastn Twachtman, No. CA 82 e.g.Hastings counsel itself be in writing. advice to seek independent

the transaction occurs, seut must be signed before that the client's written conbe in writing. It is implied consent to the transaction Finally, Rule 4-1.8(c) requires that the client's

gest this is not always the completed. Case law sugbefore the transaction is carefully follow Rule 1.8(a) perilous waters and should clients are venturing into transactions with their who enter into business ness transactions. Lawyers sttoiney may have in a busitrump any self interest the to their clients which should lawyers owe fiduciary duties tadt general istang ent Rule 4-1.8(a) stems from oslly required by the rules. sithough this is not specifi

consulted after the fact in an case. Too often, the rule is

> time is irrelevant. action to the client shead of he fully explained the transney's good faith believe that circumstances. The attorwould have done under the what a reasonable attorney tive standards. The issue is client," Note these are objecsousbly understood by the manner which can be reawriting to the client in a client, and (3) transmitted in (z) fully disclosed to the and reasonable to the chent, the interest" be (1) both fair which the lawyer acquires transaction and terms on 1.8(a)(1) requires that "the

ment in Missouri that the states, there is no requiredard. Also, unlike in other test is not a subjective stanransaction, Again, the independent counsel in the nity to seek the advice of given a "reasonable opporturequires that the client be ' Second, Rule 4-1:8(a)(2)