

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

MURRAY KEATINGE,)
)
 PLAINTIFF)
)
 v.)
)
 ELIZABETH E. BIDDLE, ET AL.,)
)
 DEFENDANTS)

Civil No. 99-321-P-H

ORDER ON MOTION FOR RECONSIDERATION

Murray Keating has sued Attorney Elizabeth Biddle and the law firm Strout & Payson, P.A. for legal malpractice and related claims. During discovery, Murray Keatinge requested access to the to the defendant lawyers= files that were created in seeking a guardianship over Murray Keatinge in the fall of 1997. In that matter, the defendant lawyers represented Keatinge=s son, Kent Keatinge, who ultimately was appointed temporary guardian. See Order Regarding Ex Parte Appointment of Guardian/Conservator, Estate of Murray Keatinge, Docket No. 97-230, dated Sept. 3, 1997, attached as Ex. A to Pl.=s Mem. in Reply to Defs.=Mem. in Opp=n to Pl.=s Mot. to Compel Produc. The lawyers refused to disclose the file, citing attorney-client privilege vis-à-vis Kent Keatinge. Murray Keatinge has responded that a ward is also a client of his guardian=s lawyers and, therefore, the lawyers cannot assert privilege on behalf of the guardian (Kent Keatinge) so as to block the ward=s (Murray Keatinge=s) access to his own file.

In an Order dated March 3, 2000, Magistrate Judge Cohen denied Murray Keatinge's motion to compel production of the file. Murray Keatinge has filed a motion to reconsider and both sides have submitted additional briefs. The motion for reconsideration is **DENIED**.

A fair reading of Murray Keatinge's request for production is that it asks for all material pertaining to the appointment of the guardian, *i.e.*, material created *prior* to the guardianship. Pl.'s Second Req. for Produc. of Docs., attached as Ex. A to Pl.'s Mot. for Recons.¹ Thus, the question before me is whether an attorney-client relationship exists between a prospective ward and the lawyers for his prospective guardian such that the ward is entitled to the legal file. I conclude that it does not.

¹ The request reads:

All writings, file materials, billing records, legal bills, e-mails, correspondence, letters, memoranda, legal files, pleadings, notes or other written documents pertaining to or in any way having to do with any work done or performed by Elizabeth E. Biddle, Esq. and/or Strout & Payson, P.A. in connection with the appointment of Kent Keatinge as temporary guardian/conservator for Murray Keatinge in 1997.

The Law Court has not issued an opinion that sheds light in this area.² Murray Keatinge relies on In re Michelson's Guardianship, 111 P.2d 1011 (Wash. 1941), In re Disciplinary Proceedings of Fraser, 523 P.2d 921 (Wash. 1974), rev-d. on other grounds, In re Disciplinary Proceedings Against Boelter, 985 P.2d 328 (Wash. 1999), and Fickett v. Superior Court of Pima County, 558 P.2d 988 (Ariz. Ct. App. 1976). Those cases, taken together, suggest that a guardian's lawyer sometimes owes a duty to the ward. What distinguishes those cases from this one, however, is that in all those cases the guardianship had already been established. Here, Murray Keatinge wants access to the lawyers' material created while the lawyers were representing only a would-be guardian who was *seeking* to be appointed at a time when there was an adversarial relationship with Murray Keatinge, who did not want the guardianship established. Even assuming that the Law Court would hold that a ward is a client of his guardian's lawyer, that attorney-client relationship would come into existence only upon the establishment of the guardianship, not before. Murray Keatinge was not a ward until the temporary guardianship was established. Before that time he was not in an attorney-client relationship with his guardian's lawyers.

² The defendants have directed my attention to Nevin v. Union Trust Co., 726 A.2d 694 (Me. 1999) and Adam v. MacDonald Page & Co., 644 A.2d 461 (Me. 1994). Neither case is helpful. Nevin held that an individual beneficiary of an estate has no standing to sue the estate planning attorney for negligence when the estate had a personal representative who stands in the shoes of the client. See Nevin, 726 A.2d at 701. Adam dealt with conflicts of interest in successive representation. See Adam, 644 A.2d at 463-64.

Accordingly, the Magistrate Judge's Order denying production of the lawyers' file created in seeking the guardianship is neither clearly erroneous nor contrary to law, and the motion for reconsideration is **DENIED**.

SO ORDERED.

DATED THIS 8TH DAY OF JUNE, 2000.

D. BROCK HORNBY
UNITED STATES CHIEF DISTRICT JUDGE

U.S. District Court
District of Maine (Portland)
Civil Docket For Case #: 99-CV-321

MURRAY KEATINGE
plaintiff

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v.

ELIZABETH H. BIDDLE
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(See above)

KENT H KEATINGE
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