

PROFESSIONAL LIABILITY UPDATE

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CRIMINAL MALPRACTICE

California Law

By Jennifer A. Becker

Young v. Runnels (9th Cir. 2006) 435 F.3d 1038

The Ninth Circuit holds that an attorney's disciplinary problems do not render her presumptively unable to provide effective assistance of counsel.

Darris Young challenged his robbery conviction arguing his trial attorney's disciplinary problems rendered her presumptively unable to provide effective assistance of counsel. When Young retained Kathryn Jo-Anne Dixon he did not know that she was facing disciplinary charges alleging forty-four counts of misconduct or that she had filed a lawsuit accusing numerous public officials, including the Alameda County DA, of being members of a pedophile ring that kidnapped local schoolchildren.

Dixon made various motions and other appropriate efforts to reduce Young's probable sentence. Prior to Young's sentencing the State Bar Court recommended Dixon's disbarment for acts that included making false statements to a tribunal and engaging in dishonesty or corruption.

To establish an ineffective assistance of counsel claim, a defendant must show that the attorney's representation fell below an objective standard of reasonableness and that there is a

reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Only in limited situations does the defendant need not show prejudice, such as where defendant is denied counsel at a critical stage of his trial or counsel entirely fails to subject the prosecution's case to meaningful adversarial testing.

Young's situation did not fall into one of the exceptions because the fact that a lawyer is subject to disciplinary proceedings while representing a client does not mean that the attorney is presumptively incapable of providing effective assistance. In addition, Dixon remained in good standing throughout her representation of Young.

A concurring opinion noted that while legal precedent bound the court, the result was cruel parody of the right to counsel. The findings in the State Bar court included bizarre accusations by Dixon against opposing counsel, inappropriate behavior, and paranoid accusations against former clients. Her

conduct before the State Bar Court included screaming at the court and actions that gave the Court the gravest concern that she was not capable of conducting herself properly in any court of law. The judge concluded that Dixon showed a complete lack of insight into the wrongfulness of her actions and could not distinguish between right and wrong. She was found to be a danger to the public and to the legal profession. The concurrence did not think that the Sixth Amendment right to counsel was satisfied merely because Dixon continued to be licensed to practice law. The justice urged the Supreme Court to eliminate this distortion of the right to counsel.

Comment: The public will distrust a legal system that allows attorneys who do not appear to be of sound mind to represent clients.