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Counsel Cannot Claim Judicial Error if Client is not Properly Informed of His Rights

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Iurii Rypninskyi (“Rypninskyi”) and Joseph Hope (“Hope”) were involved in a vehicular accident. Hope sued Rypninskyi for negligence in Illinois state court. American Inter-Fidelity Exchange (“AIFE”), the insurer for the owner of the truck Rypninskyi was driving, agreed to defend Rypninskyi and retained the law firm Cassidy Schade to do so. Throughout the discovery phase and the subsequent trial, Cassidy Schade had repeated trouble contacting Rypninskyi and ensuring his presence. Rypninskyi did not even appear at trial to testify. *Id.* at 1. The trial court sanctioned him for this by ordering *in limine* that he could not introduce a report prepared by the trooper who had responded to the accident or Hope’s statements to the trooper. When the trial court found that Rypninskyi, through Cassidy Schade, violated that order, it entered a default judgement against him as to liability. *Id.* The jury then returned a \$400,000 verdict for Hope, but Cassidy Schade did not file an appeal. Rypninskyi sued Cassidy Schade for legal malpractice, arguing that their failures had caused him not to appear at trial and suffer the judgment against him.

Cassiday Schade moved for summary judgment, invoking the “judicial error” doctrine. *Id.* at 2. They asserted that the trial court had erred in defaulting Rypninskyi as to liability, and that its error was an intervening cause “that severed the causal connection between its alleged malpractice and Rypninskyi’s injury.” *Id.* The Court rejected this argument, pointing out that “had Rypninskyi known about the judgment, he would have asked Cassidy Schade to appeal it.” *Id.* at 1. This indicated that Cassidy Schade had not kept Rypninskyi apprised of the progress of his case. Having failed to inform Rypninskyi that there was a judgment against him that warranted reconsideration, the Court found that “Cassiday Schade was responsible for failing to appeal.” *Id.* at 2. It explained that “where an allegedly negligent attorney elects not to appeal a

judgment that the attorney contends resulted from a judicial error, the attorney may not invoke judicial error as a defense to the client’s malpractice claim.” *Id.*

***Am. Inter-Fid. Exch. v. Hope*, No. 17 C 7934, 2019 WL 4189657 (N.D. Ill. Sept. 4, 2019)**

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