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## 1997 Survey of Rhode Island Law: Cases: Attorney-Client

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**Attorney-Client.** *Vallinoto v. DiSandro*, 688 A.2d 830 (R.I. 1997). A negligence-based legal malpractice claim requires proof that the attorney's services departed from the standard of care owed to his client and the client's legal position was damaged as a result of the attorney's behavior.

In *Vallinoto v. DiSandro*,<sup>1</sup> the Rhode Island Supreme Court held that the plaintiff, whose divorce attorney had allegedly compelled her to engage in sexual contacts an estimated 200 times,<sup>2</sup> was required to produce evidence at trial that the defendant attorney had departed from the duty of care owed to his client and the plaintiff's legal position was damaged as a result of the attorney's behavior.<sup>3</sup> The plaintiff's failure to produce evidence that the defendant's legal services departed from the requisite standard of care and failure to demonstrate actual damages each required a directed verdict for the defendant.<sup>4</sup>

#### FACTS AND TRAVEL

In May of 1987, Maria Del Rosario Vallinoto (Vallinoto), the plaintiff, retained Edmond A. DiSandro (DiSandro), the defendant, to represent her in a divorce action brought by her husband.<sup>5</sup> In August of 1987, Vallinoto and DiSandro became involved in an intimate physical relationship.<sup>6</sup> DiSandro claimed that the relationship was consensual, while Vallinoto claimed that the encounters were coerced by DiSandro's threats to withdraw from representation.<sup>7</sup> DiSandro allegedly stated that if he withdrew from representing Vallinoto, then she would be unable to retain a new attorney,<sup>8</sup> and the likely outcomes would be loss of child custody and deportation.<sup>9</sup> The relationship lasted approximately eighteen months and included an estimated 200 intimate encounters.<sup>10</sup>

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1. 688 A.2d 830 (R.I. 1997).

2. *See id.* at 833.

3. *See id.* at 834.

4. *See id.* at 836.

5. *See id.* at 832-33.

6. *See id.* at 833.

7. *See id.*

8. *See id.* (stating that DiSandro was the third attorney to represent Vallinoto in the divorce action).

9. *See id.* (stating that Vallinoto was a citizen of Spain at the time).

10. *See id.* at 833.

When Vallinoto's divorce became final in early 1989, DiSandro's sexual and legal relationships with his client had ended.<sup>11</sup> Vallinoto described DiSandro's legal representation throughout the divorce action as "excellent."<sup>12</sup> She subsequently returned to DiSandro for additional legal services "long after"<sup>13</sup> her divorce was final and the alleged coerced sexual relations had ceased.<sup>14</sup>

Vallinoto brought suit against DiSandro in January of 1991, alleging negligence-based legal malpractice and intentional infliction of emotional distress.<sup>15</sup> A claim of legal malpractice based upon a breach of fiduciary obligations was not included.<sup>16</sup> A jury returned a general verdict for Vallinoto which included compensatory and punitive damages.<sup>17</sup> DiSandro appealed, contending that the plaintiff's failure to show that she was damaged as a result of his legal services precluded the jury's finding of legal malpractice.<sup>18</sup>

#### BACKGROUND

In *Evora v. Henry*,<sup>19</sup> the Rhode Island Supreme Court adopted the generally accepted rule that a plaintiff in a legal-malpractice case must prove that the attorney's negligence was the proximate cause of his or her damages.<sup>20</sup> This position was later reaffirmed in *Scunio Motors, Inc. v. Teverow*.<sup>21</sup>

In *Suppressed v. Suppressed*,<sup>22</sup> the Appellate Court of Illinois reviewed a legal-malpractice complaint concerning a divorce attorney's sexual relations with his client.<sup>23</sup> The court refused to find legal malpractice based upon the existence of the relationship, reasoning that a legal cause of action should not be created solely be-

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11. *See id.* at 834.

12. *Id.* at 836.

13. *Id.*

14. *See id.* at 834.

15. *See id.*

16. *See id.* at 837.

17. *See id.* at 834.

18. *See id.* The Rhode Island Supreme Court publicly censured DiSandro for his conduct in separate proceedings. *See In re DiSandro*, 680 A.2d 73 (R.I. 1996).

19. 559 A.2d 1038 (R.I. 1989)

20. *See id.* at 1040.

21. 635 A.2d 268, 269 (R.I. 1993).

22. 565 N.E.2d 101 (Ill. App. Ct. 1990).

23. *See id.* at 102.

cause one of the parties to a sexual relationship is an attorney.<sup>24</sup> The court determined the issue of whether such conduct was an actionable breach of ethics for the attorney was best left to the state bar.<sup>25</sup> Finally, the court noted that, even if it had determined that the attorney's conduct was a breach of the fiduciary relationship to his client, the client had failed to allege actual damages in her complaint.<sup>26</sup>

In *McDaniel v. Gile*,<sup>27</sup> the California Court of Appeal reviewed a complaint alleging that a divorce attorney withheld legal services from his client when she refused to submit to the attorney's sexual advances.<sup>28</sup> The complaint alleged actual damages as a result.<sup>29</sup> The court declined to adopt a cause of action for legal malpractice based on sexual relations between the attorney and his or her client, but did find that the withholding of legal services was a breach of the attorney's fiduciary obligation.<sup>30</sup>

#### ANALYSIS AND HOLDING

In *Vallinoto*, the Rhode Island Supreme Court reviewed the duty that arises from the attorney-client relationship. The court stated that "in essential part" the duty includes competent legal representation, including the utilization of legal knowledge, skill, thoroughness and preparation reasonably necessary to protect and advance the client's interest.<sup>31</sup>

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24. See *id.* at 106.

25. See *id.* at 105. ABA Formal Opinion 92-364 reviews attorney-client sexual relationships. The opinion notes four potential risks to the attorney-client relationship. First, the relationship may result from the attorney's exploitation of the client's vulnerability and constitute a breach of the fiduciary obligation to the client. Second, the relationship may deprive the lawyer of independent judgement. Third, the relationship creates a potential conflict of interest. Finally, the relationship may risk attorney-client confidences, as the courts will only respect those conversations that occur in the attorney-client setting, and not those that occur as part of the personal relationship. The committee concluded that the attorney is "well advised to refrain from such a relationship." See ABA Comm. on Ethics and Professional Responsibility, Formal Op. 92-364 (1992).

26. See *Suppressed*, 565 N.E.2d at 105-06.

27. 281 Cal. Rptr. 242 (Cl. Ct. App. 1991).

28. See *id.*

29. See *id.* at 245-46.

30. See *id.* at 249.

31. *Vallinoto*, 688 A.2d at 834 (citing R.I. Sup. Ct. Rules of Professional Conduct Rule 1.1, art. V).

In reviewing aspects of Vallinoto and DiSandro's attorney-client relationship, the court distinguished *McDaniel v. Gile* by noting there was no evidence that DiSandro's legal services were contingent upon the ongoing sexual relations with his client.<sup>32</sup> Vallinoto "clearly had the ability and knowledge"<sup>33</sup> to discontinue the attorney-client relationship at any time if she had become dissatisfied with DiSandro's legal representation.<sup>34</sup> Vallinoto herself described DiSandro's legal representation as "excellent."<sup>35</sup> The court characterized the results of Vallinoto's divorce as "more than she had ever anticipated."<sup>36</sup> As further evidence that Vallinoto was satisfied with DiSandro's legal representation, the court noted that she returned to him for legal services after both the divorce action and the sexual relationship ended.<sup>37</sup> The court concluded that DiSandro's legal services met the standards required by the profession.<sup>38</sup> The absence of any actual damages mandated a directed verdict for DiSandro on the claim of negligence-based legal malpractice.<sup>39</sup>

The court further refused to create a private cause of action based on DiSandro's violation of the Rules of Professional Conduct,<sup>40</sup> noting a that "clear and unanimous judicial rule"<sup>41</sup> exists prohibiting a negligence claim for breach of a fiduciary duty based solely upon a professional code violation.<sup>42</sup> The Rules of Professional Conduct themselves specifically state that a "violation . . . should not give rise to a cause of action."<sup>43</sup> The court followed the holdings of other jurisdictions<sup>44</sup> and its own professional code in

32. *See id.* at 835.

33. *Id.* at 835.

34. *See id.*

35. *Id.* at 836.

36. *Id.*

37. *See id.* at 834.

38. *See id.* at 836.

39. *See id.* Vallinoto received an increase in child-support payments, custody of her daughter, 60% of marital assets, priceless paintings and heirlooms, and attorney's fees in the final divorce decree. *See id.* at 833.

40. *See In re DiSandro*, 680 A.2d 73 (R.I. 1996). The court found DiSandro had violated Rule 1.7(b) of the Rules of Professional Conduct, which prohibits conflicts of interest. *See id.* at 74.

41. *Vallinoto*, 688 A.2d at 837.

42. *See id.*

43. *Id.* at 838 (citing R.I. Sup. Ct. Rules of Professional Conduct Preamble, art. V).

44. *See supra* notes 22-30 and accompanying text.

reaching this conclusion. The case was remanded for a new trial based upon the plaintiff's claim that DiSandro's conduct constituted intentional infliction of emotional distress.<sup>45</sup>

#### CONCLUSION

The court separated DiSandro's legal representation from his sexual relationship with his client. Analyzing his service as an attorney, the court found that DiSandro's legal representation met the required standards. The plaintiff herself described the service as excellent, and did not claim that any damages arose from her attorney's legal representation.

The court determined that the occurrence of sexual relations between an attorney and his client did not create a cause of action based solely on the defendant's status as an attorney. Although critical of DiSandro's action as a professional, the court refused to create a private cause of action based on his unprofessional conduct. The defendant's claim of intentional infliction of emotional distress survived the defendant's appeal, and the case was remanded for a new trial.

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45. *See id.* at 842.