

## **You Have the Right to Change Your Mind (But Don't Let Someone Change It For You)**

by Nancy R. Larson

People change their minds all the time, but sometimes it is because they are being unduly influenced or someone is taking advantage. How do you protect yourself from someone who is trying to financially take advantage of you now, if you become disabled, or at death?

In the case of *Dunn v. Patterson*, an Illinois court of appeals found that a provision in estate planning documents that requires clients to consult with the drafting attorney before making changes to the documents does not violate public policy and is, in fact, "admirable." (Ill. App. Ct., No.3-07-0881, Nov. 18, 2009.)

Charles and Charlotte Dunn hired Attorney Lawrence Patterson to draft estate planning documents for them. Each of the documents contained a provision that required the Dunns to consult with Attorney Patterson before amending or changing the documents.

A few months later, Mr. Patterson received a letter from Attorney Timothy McJoynt saying that he represented the Dunns and that they now wished to remove his name from their documents. Attorney Patterson responded that the Dunns either needed to meet with him or to petition the court to amend the documents.

The Dunns went to court seeking a declaratory judgment against Mr. Patterson arguing that they had the right to amend the documents. The trial court found that the revocation and amendment provisions were void based on public policy and sanctioned Mr. Patterson. Mr. Patterson appealed.

The Illinois Court of Appeals reversed, holding that the revocation and amendment provisions are consistent with the fiduciary duty that an attorney owes a client. The court notes that the elderly are often taken advantage of and the provisions in question were tailored to reduce the risk of undue influence. The court holds that

Mr. Patterson's conduct was not sanctionable; instead, the court finds "it admirable and consistent with the highest ideals of the bar."

If you or someone you know is vulnerable to being taken advantage of, you may want to consider adding terms to your Power of Attorney, Last Will and Testament, and Trust that will act as a buffer and give you added protection. Also, in Illinois you may anonymously call the Elder Abuse and Neglect Hotline at 1-866-800-1409 to report physical or financial elder abuse. In Missouri, you may contact the Department for Health and Senior Services at 1-800-392-0210.

For full opinion see:

<http://www.state.il.us/court/Opinions/AppellateCourt/2009/3rdDistrict/November/3070881.pdf>