

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**MARY LOU SCHIEBER,
PROTECTEE
vs.**

**MARY LOU SCHIEBER,
APPELLANT**

**MICHAEL SCHIEBER,
RESPONDENT**

DOCKET NUMBER WD70095

DATE: SEPTEMBER 29, 2009

Appeal from:

Nodaway County Circuit Court
The Honorable Jacqueline A. Cook, Judge

Appellate Judges:

Division Two: Victor C. Howard, P.J., Joseph M. Ellis and Mark D. Pfeiffer, JJ.

Attorneys:

Steven M. Petry, for Protectee Mary Lou Schieber

Scott W. Ross, for Appellant Mary Lou Schieber

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

MARY LOU SCHIEBER, PROTECTEE

v.

**MARY LOU SCHIEBER, APPELLANT
MICHAEL SCHIEBER, RESPONDENT**

WD70095

Nodaway County, Missouri

Before Division Two Judges: Victor C. Howard, P.J., Joseph M. Ellis and Mark D. Pfeiffer, JJ.

Prior to a hearing regarding the status of Mary Lou Schieber, who had been adjudicated totally incapacitated and totally disabled, court-appointed counsel for Mrs. Schieber filed a motion to disqualify her private counsel. The trial court granted the motion, finding that, due to the previous adjudication, Mrs. Schieber did not have the capacity to retain private counsel and that private counsel's prior and continuing representation of Mrs. Schieber's sister constituted a conflict of interest. Mrs. Schieber appeals.

AFFIRMED.

Division Two holds:

Where private counsel failed to present any applicable authority regarding Mrs. Schieber's right to be present at a hearing on a motion to disqualify private counsel, the trial court did not err in finding that Mrs. Schieber's presence at the hearing was not required.

Where Mrs. Schieber had previously been adjudicated totally incapacitated and totally disabled, and the trial court was not satisfied that private counsel would be free from outside influence due to his prior and continuing representation of Mrs. Schieber's sister, the trial court did not abuse its discretion in granting court-appointed counsel's motion to disqualify Mrs. Schieber's private counsel.

Opinion by: Victor C. Howard, Presiding Judge

September 29, 2009

Concurring opinion by Judge Joseph M. Ellis:

- (1) Notwithstanding Mrs. Schieber's previous adjudication as totally incapacitated and totally disabled, she can seek, select, and be represented by otherwise qualified private counsel. By providing that a ward or protectee individually may petition the court for restoration, and providing that if the ward or protectee is unrepresented by counsel, an attorney is to be appointed, the legislature implicitly, if not expressly, acknowledged that a ward or protectee may seek out counsel of his or her own choosing to assist in seeking restoration.
- (2) An incapacitated individual lacks, however, the capacity to enter into a binding contract to pay for such legal services and cannot "hire" an attorney.

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