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Federal Court Surveys “Actual Innocence” Requirement for Legal Malpractice Claims

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The federal court in Tacoma recently surveyed the “actual innocence” requirement for legal malpractice claims arising from criminal cases and a related exception to that rule. *Neaman v. Washington State Department of Corrections*, 2025 WL 672642 (W.D. Wash. Mar. 3, 2025) (unpublished), involved, in relevant part, a malpractice claim against a criminal defendant’s former attorneys over an asserted error in the modification of his sentence. In brief, the client argued that his lawyers failed to object to the modification that effectively extended his sentence after he had completed his community custody term. The client had prevailed on his appeal of the modification in the underlying criminal case. The legal malpractice case followed.

In the legal malpractice case, the defendant lawyers moved for summary judgment. They relied on a policy-based addition to the standard elements of a legal malpractice claim when it arises from a criminal case: under (among others) *Ang v. Martin*, 154 Wn.2d 477, 114 P.3d 637 (2005), plaintiffs in legal malpractice claims arising from criminal proceedings must also show that they are actually innocent of the crimes involved. The plaintiff former client, in turn, argued that he fell within a narrow exception first recognized by the Washington Court of Appeals in *Powell v. Associated Couns. For Accused*, 131 Wn. App.

810, 129 P.3d 831 (2006), and later acknowledged by the Washington Supreme Court in *Piris v. Kitching*, 185 Wn.2d 856, 375 P.3d 627 (2016). Under the exception, a plaintiff is excused from proving actual innocence when the claimed negligence arose in the context of sentencing that was beyond what the trial court was legally authorized to impose.

In *Neaman* malpractice case, the federal court concluded that the “*Powell* exception” applied because the former client had already completed his community custody by the point his sentence was modified (and extended). The federal court, therefore, denied the defendant attorneys’ summary judgment motion. Although *Neaman* does not plow any new legal ground, it contains a detailed summary of the law of legal malpractice stemming from criminal proceedings.

ABOUT THE AUTHOR

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