

## Indiana Recognizes New Malpractice Risk for Criminal Defense Lawyers



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Indiana Courts have long permitted convicted criminal defendants to pursue legal malpractice actions against their defense attorneys without first establishing their innocence of a crime. *Godby v. Whitehead*, 837 N.E.2d 146 (Ind.Ct.App.2005). In a recent case, *Beal and The Bar Plan Mutual Insurance Company v. Blinn*, No. 27A03-1306-PL-235, the Indiana Court of Appeals broadened potential legal liability to permit criminal defendants who plead guilty to bring a claim for legal malpractice against their attorneys.

To prove a legal malpractice claim in Indiana, the client must show employment of the attorney, the attorney's failure to exercise ordinary skill and knowledge, and that the particular failure proximately caused damages. *Sleweon v. Burke, Murphy, Constanza & Cuppy*, 712 N.E.2d 517, 520 (Ind.Ct.App.1999). To establish causation, the client must show that the outcome of the underlying litigation would have been more favorable but for the attorney's negligence. *Id.* This typically requires a trial within a trial. The *Beal* Court found that a client could meet the causation element, even though they pleaded guilty to the crime for which the representation arose. Intuitively, the lawyer could not have obtained a better outcome where the client admits his guilt.

In *Beal*, the client was the target of an FBI investigation for money laundering. The client consented to interview by the FBI. During the interview, the client uttered incriminating statements. When charged with money laundering, the client pleaded guilty. The client charged his attorney with legal malpractice arising from the attorney's alleged refusal to present the client for an additional FBI interview. The client claimed he would have submitted to another FBI interview if he had been aware of the request and that the additional interview could have led to a lesser criminal penalty. This is the first case in Indiana permitting a criminal defendant who admits guilt for a crime to pursue a legal malpractice arising from defense of the crime. This raises a significant public policy concern as to whether a criminal defendant may profit from committing a crime.

The *Beal* holding may embolden suits by admittedly guilty criminal defendants who are dissatisfied with their criminal sentences. If you have any questions regarding this decision or matters affecting the legal liability of legal professionals in Ohio, Kentucky, or Indiana, please contact one of our Legal Professional Liability Group Members.

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