



## Alerts

### Exoneration Defense Not Applicable to Criminal Contempt Order in Civil Case

May 8, 2014

*Lawyers for the Profession® Alert*

*Byrd v. Phillip Galyen, P. C.*, \_\_\_ S.W.3d \_\_\_, 2014 WL 1499648 (Tx. Ct.App.)

#### Brief Summary

A Texas appellate court concluded that the sole-proximate cause defense (or exoneration rule) did not apply to legal malpractice claims arising from remedial contempt orders entered in civil courts.

#### Complete Summary

The plaintiff ran into trouble in his divorce proceedings. He commenced the action in April 2006, and he was served with discovery requests in November 2006. By February 2007, when no responses had been provided, his wife moved to compel and for sanctions.

Not long after the motion was filed, the billing records of plaintiff's lawyers (i.e., the legal malpractice defendants), showed that interrogatory answers were prepared. Throughout the next several months, the answers were revised as plaintiff provided more information. Finally, in April 2007, the plaintiff signed the interrogatory answers. For some reason, however, the answers were never served on plaintiff's wife. In fact, the only responses ever served were "supplemental" and provided bank statements.

In September 2007, the court ordered plaintiff to respond to the outstanding discovery and to appear later for the possible imposition of sanctions. At a later hearing, the court struck plaintiff's pleadings, prohibited him from making any claim for a disproportionate division of property in his favor, and committed him to jail for 30 days for failure to comply with the court's order compelling discovery responses. After some motion practice, plaintiff's incarceration was suspended when he paid \$20,000 for the benefit of his ex-wife, and he was released from jail. His appeal from the sanctions order was dismissed because it was not an appealable order.

After the completion of the divorce proceedings, plaintiff sued his lawyers claiming negligence, breach of fiduciary duty, and fraud. The lawyers moved for dismissal, arguing that plaintiff had been convicted and incarcerated, but not exonerated. His conviction of criminal contempt (albeit in a civil case) was therefore the sole proximate cause of his damages, and any recovery for legal malpractice was barred. The trial court agreed.

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The appellate court disagreed, however, and remanded the case back to the trial court. The question addressed by the appellate court was whether a remedial contempt order is tantamount to a criminal conviction thereby barring negligence claims in the absence of a showing of exoneration.

The court's decision was based in large part on the nature of a remedial contempt order, which is available to punish those who disrespect a court's authority and to deter others from engaging in disrespectful behavior. Despite the availability of six months' jail time, the due process to which a contemnor is entitled is far less extensive than the protections provided a defendant under a criminal indictment. Plaintiff was subject to no indictment, criminal information, had no jury right, no recourse, pardon, or clemency, no right to bail, and no right of appeal. Moreover, any habeus-corpus matter would be heard by the civil appeals court, rather than the criminal appeals court.

Because there was no available appellate review, the only relief from a criminal contempt order by a civil court is the declaration that the court's prior order was void, or that there was insufficient due process. There was no availability of exoneration — that is, that the contemnor did not violate the court's prior order. Thus, it would be a legal impossibility for a contemnor to demonstrate exoneration.

Accordingly, the court concluded that the application of the narrow sole-proximate-cause bar (the exoneration or actual innocence rule) to legal malpractice claims arising from a civil remedial contempt order would be one step too far. The public policy considerations applicable to a convicted criminal defendant are not implicated in this context, and plaintiff could proceed with his alleged legal malpractice claim.

### **Significance of Opinion**

This decision is significant because it offers an analysis of the policies underlying the exoneration rule, and its non-availability in the civil context. Because the due process protections for contemnors in civil court do not include an appeal process or any ability to obtain exoneration, the sole-proximate-cause/exoneration defense is inapplicable.

For more information, please contact [Terrence P. McAvoy](#) or [Noah D. Fiedler](#).

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