



Alerts

Kansas Draws the Line Regarding Actual Innocence and Legal Malpractice Actions

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Lawyers for the Profession® Alert

Mashaney v. Board of Indigents' Defense Services, ___ P.3d ___, 2015 WL 5081263 (Kan. 2015)

Brief Summary

The Supreme Court of Kansas determined that a criminal defendant who had a conviction reversed due to ineffective counsel may pursue a legal malpractice claim against his counsel without having to prove actual innocence. The court also determined that the criminal defendant must bring his malpractice action within two years from the date he or she receives relief from the conviction.

Complete Summary

After a jury trial, plaintiff was found guilty of criminal sodomy and sentenced. The verdict was affirmed on appeal. Plaintiff then filed motions *pro se* alleging ineffective assistance of counsel at both the trial and appeal. Finding in plaintiff's favor, the appellate court reversed and remanded. While his case was pending on the trial calendar on remand, plaintiff entered an *Alford* plea of guilty pursuant to an agreement with the state for a sentence less than the time he already served for the original charges. An *Alford* plea is generally characterized as a guilty plea, although the defendant publicly maintains his or her innocence. Plaintiff filed his malpractice action less than two years from the date his motion for relief was granted.

Regarding the statute of limitations issue, the court noted that a legal malpractice action accrues when the plaintiff could have first filed and prosecuted his action to successful completion. Kansas, like the majority of jurisdictions, requires the plaintiff to be exonerated through post-conviction proceedings before being able to bring a legal malpractice claim against his criminal defense attorney for ineffective assistance of counsel. The Supreme Court of Kansas favored the "exoneration" rule because it seemingly provides a bright-line rule for determining when all four elements of a legal malpractice claim are available.

The court clarified that the term "exoneration" is a legal concept that requires the lifting of criminal liability, regardless of whether the reversal or vacation is compelled by a successful assertion of actual innocence. The issue specifically addressed by this court was how thorough and permanent the relief must be to trigger "exoneration" and thus the accrual of the legal malpractice claim.

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Choosing to follow several other states' treatment of the issue (Alaska, Illinois, Minnesota, Nevada, Oregon and Washington), the Supreme Court of Kansas adopted the date of the court's decision to initially reverse or vacate a conviction as the measuring point for when exoneration occurs and the civil cause of action accrues. The court noted that the rule provides as bright a line as is possible, reasoning the rule should not depend on whether the state decides to revive the prosecution to an ultimate and final determination.

Further, the court determined that plaintiff's *Alford* plea did not automatically bar his lawsuit under the "actual innocence" rule. Certain jurisdictions that have adopted the actual innocence rule require a criminal defendant exonerated because of his or her lawyer's ineffective counsel to prove that he or she was actually innocent of the crimes charged in order to establish a civil action for legal malpractice. After addressing several policy reasons in support of the rule, the court ultimately decided that criminal defendants have a right to competent legal representation regardless of guilt or innocence. A client should have the opportunity for full recompense should a lawyer's violation of that right result in the client's conviction or incarceration. The court therefore declined to require a legal malpractice plaintiff who bases his or her claim on ineffective counsel in a criminal case to prove actual innocence of the charged crimes.

Significance of Opinion

This decision is significant because Kansas joins the list of states adopting a bright-line rule for the accrual of legal malpractice actions against criminal defense attorneys, and the court concluded that criminal defense attorneys should be held accountable for negligent legal services, regardless of actual innocence or guilt.

For more information, please contact [Terrence P. McAvoy](#) or [Michael G. Ruff](#).