

The Professional Liability Law Blog

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INSURANCE PROFESSIONALS, ACCOUNTANTS AND STOCK BROKERS



[Actual Innocence Rule Applies to Legal Malpractice Case Based on Alleged Mishandling of Request for Habeas Corpus Relief](#)

Friday, November 12th, 2010

In California, a plaintiff alleging legal malpractice in the handling of a criminal case must prove an element that is not required to be proven when the alleged malpractice arises from the handling of a civil case. That element is the plaintiff's actual innocence of the charged crime.

In *Williams v. Zugman* (Second Appellate District, Division Four, Case No. B218656), the plaintiff/client had previously been convicted of arson in state court, and the conviction was confirmed on appeal. He then sought habeas corpus relief in federal court, which was denied. The client then sued his attorney for legal malpractice in connection with the request for habeas corpus relief. In the malpractice complaint, the client alleged that but for the attorney's malpractice, he would have received a more favorable result on his habeas corpus petition. However, he did not allege facts showing actual innocence of arson.

The attorney demurred to the complaint, pointing to the absence of facts showing actual innocence, and the trial court sustained the demurrer. On appeal, the client argued that he should not be required to allege actual innocence in this circumstance because a federal habeas corpus petition is classified as a civil rather than a criminal proceeding. However, in an [unpublished decision](#) dated November 9, 2010, the Court of Appeal rejected this argument and upheld the dismissal of the case. The court ruled that the civil/criminal classification was not determinative as to whether the actual innocence rule applied. Rather, it was necessary to examine the various policy considerations underlying the actual innocence rule. Here, such policy considerations supported applying the rule to a legal malpractice case based on the alleged mishandling of a request for habeas corpus relief.