

Guilty Plea Does Not Protect Lawyer Providing Advice Before Criminal Acts

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[*Winstock v. Galasso*, 430 N.J. Super. 391, 64 A.3d 1012 \(2013\)](#)

Brief Summary

A former police officer/plaintiff (client) engaged defendant lawyer to monitor and opine on the legality of the client's social club/gambling operation. The client and his wife were later indicted on counts of perjury and illegal gambling, including maintaining a gambling resort. The client pled guilty pursuant to a plea agreement, while his wife was admitted into a treatment program in lieu of prosecution, which did not require a plea of guilt. Reversing summary judgment for the lawyer, the court explained that the wife's program admission did not equate to a conviction. Further, the client's guilty plea was admissible evidence but not conclusive of guilt, and did not dispose of the lawyer's liability for incorrect, pre-conviction advice.

Complete Summary

The client enjoyed playing poker and organized and participated in numerous poker tournaments. While participating in a poker tournament, he met the attorney. After the tournament, the client contacted the attorney to obtain advice on the legality of running a club that charged a flat entry fee and permitted poker tournaments where all the contestants' bets were paid out to the eventual winners. Based on attorney's advice, which included a written opinion letter, the client and his wife opened a club that permitted poker tournaments, and they hired the attorney to oversee the poker tournaments.

Despite the attorney's advice, the client and his wife were charged with various crimes, including perjury, illegal gambling and maintaining a gambling resort. The client's wife was admitted into a diversionary program without a guilty plea. The client eventually pled guilty to maintaining a gambling resort and promoting gambling. After unsuccessfully moving to vacate his plea, he and his wife sued the attorney for legal malpractice.

The trial court granted the attorney's motion for summary judgment, relying on a New Jersey case that precluded a plaintiff from taking a position in a legal malpractice action that was inconsistent with the factual basis he gave to induce the criminal court to accept his guilty plea. Reversing the trial court, the court of appeals distinguished the precedent because the plaintiff in that case was already involved in criminal acts before he hired the defendant lawyer. Here, the client committed the criminal acts after retaining the lawyer.

The court found the timing of the retention and of the acts to be particularly important and stated:

It is undisputed that all of this [illegal] activity [the client] admitted occurred *after he had retained the [attorney] as his legal advisor. . . .* Although [the attorney's] legal opinion may not have absolved [the client] of criminal responsibility for his actions, [the client's] admission of criminal culpability did not relieve [the attorney] of his duty to provide [the client] with legally correct advice.

(emphasis in original).

Moreover, the court concluded that the client's admissions were not dispositive of the attorney's potential civil liability to the client. The court held that the client's admissions at the criminal hearing were admissible as impeachment, but were not dispositive of the claim.

Significance of Opinion

This decision establishes possible liability for faulty advice which results in a client performing an act later found to be criminal. The court's very broad statement that the attorney had a duty to "provide legally correct advice" is likely to be used by plaintiffs' lawyers in a variety of contexts. Lawyers opining on the legality of any potential and future act should take great care in qualifying their opinions.

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

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