

S.115

Introduced by Senator Sears

Referred to Committee on Judiciary

Date: January 3, 2012

Subject: Criminal procedures; public defenders; malpractice claims

Statement of purpose: This bill proposes to prohibit malpractice claims against public defender contract attorneys unless the plaintiff has first prevailed in a post-conviction relief claim against the attorney based upon ineffective assistance of counsel in the same or a substantially related matter.

~~An act relating to malpractice claims against public defender contract attorneys~~
An act relating to ineffective assistance claims against assigned counsel

It is hereby enacted by the General Assembly of the State of Vermont:

~~Sec. 1. 13 V.S.A. § 5241 is added to read:~~

§ 5241. MALPRACTICE CLAIM AGAINST DEFENDER GENERAL;

SUCCESSFUL INEFFECTIVE ASSISTANCE CLAIM

REQUIRED

No action shall be brought for professional negligence against a criminal defense attorney under contract with or providing ad hoc legal services for the office of the defender general unless the plaintiff has first successfully prevailed in a claim for post-conviction relief based upon ineffective assistance of counsel against that criminal defense attorney in the same or a substantially related matter. Failure to prevail in a claim for post-conviction relief based

1 ~~upon ineffective assistance of counsel against a criminal defense attorney~~
2 ~~under contract with or providing ad hoc legal services for the office of the~~
3 ~~defender general shall bar any claim against the attorney based upon the~~
4 ~~attorney's representation in the same or a substantially related matter.~~

Sec. 1. 13 V.S.A. § 5241 is added to read:

§ 5241. INEFFECTIVE ASSISTANCE CLAIM

No action shall be brought for professional negligence against a criminal defense attorney under contract with or providing ad hoc legal services for the office of the defender general unless the plaintiff has first successfully prevailed in a claim for post-conviction relief based upon ineffective assistance of counsel in the same or a substantially related matter. Failure to prevail in a claim for post-conviction relief based upon ineffective assistance of counsel under contract with or providing ad hoc legal services for the office of the defender general shall bar any claim against the attorney based upon the attorney's representation in the same or a substantially related matter.

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