You are a law clerk to the chief judge of a state appellate court, reviewing a trial court’s ruling on a motion for summary judgment in a legal malpractice case. The matter will be decided by a three-judge court. You have been asked to write the opinion for the two-judge majority in this case of first impression. You can decide the case any way you want. You should anticipate, however, a strong dissent from the other judge so you should address the arguments that will be asserted against your position by the dissent.

The issue before the court is whether a person convicted of a crime must prove her innocence in order to recover on a legal malpractice claim against the lawyer who represented her in the underlying matter. In giving you this assignment, the chief judge has expressed concerns about how broadly such a rule, if any, might be applied. For example, would it apply only to felonies and misdemeanors, or also to certain torts, such as bankruptcy fraud (which can be a RICO predicate act) or even to common law fraud, which may carry a lesser burden of proof and a lower degree of scienter and culpability. The chief judge wonders, too, whether the foundation for this rule is a public policy against convicted criminals suing their lawyers or really a matter of proximate causation. Provide her with your analysis, explore the policy considerations, and discuss how far such a rule, if any, should reach along the continuum from felony to tort.