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Attorneys for: Kimberly A. Paton, Esq.

STATE OF NEW JERSEY

Plaintiff,

v.

PAUL J. CANEIRO

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CRIMINAL PART
MONMOUTH COUNTY

INDICTMENT NO. 19-02-283-I
CASE NO. 18-004915

CRIMINAL ACTION

**CERTIFICATION OF ROBERT B.
HILLE, ESQ.**

ROBERT B. HILLE, being of full age, hereby certifies and says as follows:

1. I am attorney-at-law of the State of New Jersey and a partner with the firm of Greenbaum, Rowe, Smith & Davis, LLP, attorneys for The Paton Law Firm LLC and Kimberly A. Paton, Esq. As such, I have personal knowledge of the facts and circumstances set forth herein.

2. I submit this Certification in support of witness Kimberly A. Paton, Esq.'s ("Paton") Motion to Quash the Subpoena attached as Exhibit A or issue a protective order regarding the scope of Ms. Paton's response and resolution of privilege and confidentiality issues.

3. The subject Subpoena *Duces Tecum* seeks:

any and all Retainer Agreements/ Fee Agreements/ Engagement Letters between the Paton Law Firm and Paul Caneiro; between the Paton Law Firm and Keith Caneiro; between the Paton Law Firm and Square One, Inc.; between the Paton Law Firm and Jay-Martin Consulting, Inc.; between the Paton Law Firm and Ecostar Pest Management, Inc.; and between the Paton Law Firm and Corey Caneiro. Please also provide any/all email/ text communications between the Paton Law Firm and Corey Caneiro.

The Subpoena additionally sets forth that “If records are received prior to the 30th of June, court appearance will be waived.”

4. We also anticipate that the State of New Jersey will subpoena Ms. Paton to testify by the State of New Jersey.

5. The following is a general background which is reflected in the Surrogate and Chancery matters involving Keith Caneiro’s estate and trust documents.

6. In or around July of 2005, Paton prepared a Credit Shelter Trust for Keith Caneiro and reviewed and advised him regarding an earlier blind Trust document prepared for him by the Norris, McLaughlin & Morris law firm.

7. Paton also prepared estate planning documents for Paul, Susan, Keith, and Jennifer Caneiro. These were executed by all the parties on July 13, 2005 at Paul and Keith’s business office.

8. Paton later prepared an updated Will for Keith Caneiro that was executed on February 1, 2006.

9. In or around 2017, Paton was contacted by Cesar Caneiro to prepare Wills, Living Wills, and Powers of Attorney for him and his wife. However, these were never done.

10. In or around May and June of 2017, Keith Caneiro communicated with Ms. Paton relating to his Trusts and Will.

11. There was follow-up but the changes were not made.

12. In or around November 21, 2018, Steve Weinstein, CPA, who referred Ms. Paton to the Caneiros informed Paton of the deaths of Keith Caneiro and Jennifer Caneiro and their children, [REDACTED]

13. Thereafter, the Paton Law Firm LLC had contact with Corey Caneiro regarding Keith's estate and trust; and a retainer signed with Corey Caneiro, in his role as Trustee of the Keith Caneiro Irrevocable Credit Shelter Trusts.

14. The Paton Law Firm LLC also had contact with Cesar Caneiro as Fiduciary for Keith Caneiro's Estate.

15. These relationships and Ms. Paton's involvement in that regard, trigger the attorney client privilege (NJRE 504) and the broader confidentiality requirements under RPC 1.6. Therefore, court intervention is required to resolve those in advance of any production and testimony.

16. Consistent with NJRE 611 and case law, judicial economy would best be served by the Court addressing all issues at this time.

17. Accordingly the witness movant requests the Court either quash the subpoena and bar her testimony at trial or issue a protective order protecting her from the adverse consequences of disclosure and testifying.

I certify that the foregoing statements made by me are true. I am aware that if any of the statements made by me are willfully false, I am subject to punishment.

GREENBAUM, ROWE, SMITH & DAVIS LLP
Attorneys for Kimberly A. Paton, Esq.



Robert B. Hille, Esq.

DATED: June 23, 2025

Robert B. Hille, Esq.: 018811983
GREENBAUM, ROWE, SMITH & DAVIS LLP
75 Livingston Avenue
Suite 301
Roseland, New Jersey 07068-3701
(973) 535-1600
Attorneys for: Kimberly A. Paton, Esq.

STATE OF NEW JERSEY

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SUPERIOR COURT OF NEW JERSEY
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MONMOUTH COUNTY

INDICTMENT NO. 19-02-283-I
CASE NO. 18-004915

CRIMINAL ACTION

NOTICE OF MOTION

TO: Christopher Decker, Esq., Assistant Prosecutor
Nicole Wallace, Esq., Assistant Prosecutor
Monmouth County Prosecutor's Office
132 Jerseyville Avenue Freehold, NJ 07728

Monika Mastellone Esq., Assistant Deputy Public Defender
Victoria Howard Esq., Assistant Deputy Public Defender
Office of the Public Defender
7 Broad Street, Freehold, NJ 07728

COUNSEL:

PLEASE TAKE NOTICE that on July 11, 2025, at 9:00 a.m., or as soon thereafter as counsel may be heard, the undersigned, attorneys for Kimberly A. Paton, Esq., shall apply to the Superior Court of New Jersey, Monmouth County, Criminal Division, Monmouth County Courthouse, 71 Monument Park Freehold, NJ 07728 to quash or modify the subpoena *duces tecum* served by Defendant on Kimberly A. Paton, Esq. and for a protective order regarding the scope of Ms. Paton's response and resolution of privilege and confidentiality issues pursuant to R. 1:9-2 and R. 3:13-3(e).

PLEASE TAKE FURTHER NOTICE that the within motion is supported by the annexed Brief and Certification of Robert B. Hille, Esq. and should be granted for the reasons stated therein; and

PLEASE TAKE FURTHER NOTICE that the within motion is accompanied by a proposed form of Order and is submitted to the Court pursuant to the provisions of Rule 1:6-2; and

PLEASE TAKE FURTHER NOTICE that Oral Argument is requested in the event timely opposition is filed.

GREENBAUM, ROWE, SMITH & DAVIS LLP
Attorneys for Kimberly A. Paton, Esq.

A handwritten signature in dark ink, appearing to read 'R. B. Hille', is positioned above a horizontal line.

Robert B. Hille, Esq.

DATED: June 23, 2025

CERTIFICATION OF SERVICE

I hereby certify that on this date, Ms. Paton's Notice of Motion, Brief, Certification of Robert B. Hille, Esq. and proposed form of Order were electronically filed on E-Courts.

Courtesy copies of the foregoing papers were sent to the chambers of The Honorable Marc C. Lemieux, A.J.S.C., Superior Court of New Jersey, Monmouth County, Criminal Division, Monmouth County Courthouse, 71 Monument Park Freehold, NJ 07728 via Federal Express.

I further certify that on this date, copies of the foregoing papers were served via eCourts and e-mail on the following counsel of record:

Christopher Decker, Esq., Assistant Prosecutor
Nicole Wallace, Esq., Assistant Prosecutor
Monmouth County Prosecutor's Office
132 Jerseyville Avenue Freehold, NJ 07728

Monika Mastellone Esq., Assistant Deputy Public Defender
Victoria Howard Esq., Assistant Deputy Public Defender
Office of the Public Defender
7 Broad Street, Freehold, NJ 07728

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

GREENBAUM, ROWE, SMITH & DAVIS LLP
Attorneys for Kimberly A. Paton, Esq.



Robert B. Hille, Esq.

DATED: June 23, 2025

STATE OF NEW JERSEY,

Plaintiff,

v.

PAUL J. CANEIRO,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CRIMINAL PART
MONMOUTH COUNTY

INDICTMENT NO. 19-02-283-I
CASE NO. 18-004915

CRIMINAL ACTION

**BRIEF IN SUPPORT OF WITNESS KIMBERLY A. PATON, ESQ. MOTION TO
QUASH DEFENDANT'S SUBPOENA OR TO MODIFY AND FOR PROTECTIVE
ORDER FROM A CLAIM OF VIOLATION OF CONFIDENTIALITY AND
ATTORNEY CLIENT PRIVILEGE OBLIGATION**

GREENBAUM, ROWE, SMITH & DAVIS LLP
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(973) 535-1600
Attorneys for: Kimberly A. Paton, Esq.

Of Counsel:

Robert B. Hille, Esq. (018811983)

On the Brief:

Robert B. Hille, Esq. (018811983)
Jennifer A. Belardo, Esq. (335902021)

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STATEMENT OF FACTS

This motion arises from a subpoena *duces tecum* served on Kimberly A. Paton, Esq. by counsel for the defendant Paul Caneiro in this matter. Ms. Paton is an attorney at law in good standing of the State of New Jersey.

In that capacity, she was retained by and prepared certain estate planning and trust documents for Keith Caneiro and his wife, Jennifer Karacidis-Caneiro. She also reviewed and advised Keith Caneiro about an earlier blind trust document prepared by the law firm of Norris, McLaughlin & Morris (“Norris Trust”).

Ms. Paton prepared a Credit Shelter Trust for Keith Caneiro. Paul Caneiro was Trustee of both Trusts. She was also retained by Paul Caneiro and his wife, Susan Caneiro, to prepare and execute their estate planning documents.

Ms. Paton was referred to the Caneiros by accountant Steven Weinstein, CPA.

The Wills were executed by the Caneiros in 2005 in the presence of each other at Paul and Keith Caneiro’s business location.

Later in 2006, Ms. Paton updated Keith Caneiro’s Will.

In 2017, Cesar Caneiro, father of Keith and Paul, contacted Ms. Paton to prepare estate documents for him and his wife.

That same year, Keith Caneiro contacted Ms. Paton concerning changes to the Trust documents and the Trustee. Those changes had not been made and on or around November 21, 2018, Mr. Weinstein advised Ms. Paton that Keith Caneiro, Jennifer Karacidis-Caneiro and their children became deceased.

Thereafter, Ms. Paton was contacted and retained by Corey Caneiro in connection with Keith Caneiro’s Estate and regarding his role as Trustee of the trusts set up by Keith Caneiro.

When Paul Caneiro was accused in the deaths of his brother Keith and Keith's family, Ms. Paton represented Paul Caneiro regarding renunciations of his role as fiduciary in Keith Caneiro's trust documents.

She was also consulted by Cesar Caneiro regarding his appointment and role as fiduciary of Keith Caneiro's Estate.

The foregoing is reflected in or referenced in the Surrogate's and Chancery Divisions files dealing with the Estate and Trust matters.

Ms. Paton has been contacted by the Monmouth County Prosecutor's Office and previously served with a Grand Jury Subpoena to which she responded. They advised that they will ask her for a proffer and will subpoena her as a witness in their murder case against Paul Caneiro. That case is scheduled for trial on September 8, 2025.

The defendant's pending subpoena *duces tecum* and the State's expressed need for her testimony that they intend to elicit relates to her relationship with the defendant, victims and the interested parties, an explanation of the documents she prepared and communications she had with any of those persons.

Clearly from the foregoing, the focus of all disclosures and inquiry of Ms. Paton arise from and relate to her attorney-client relationships with aforesaid persons.

As a consequence, those relationships and all information sought are covered by the confidentiality provisions of Rule of Professional Conduct (RPC) 1.6 and the attorney-client privilege encompassed within New Jersey Rule of Evidence (NJRE) 504.

Additionally, the fiduciary nature of the attorney-client relationship triggers a duty of loyalty against providing opinion or expert testimony that needs to be protected and/or addressed to the extent the State or defendants intend to elicit such testimony.

Because the subject privilege belongs to her clients and not Ms. Paton, she is required to assert those privileges in response to the subpoena *duces tecum*. The court may address those issues at this time under R. 1:9-2 as to the subpoena *duces tecum* and NJRE 611 and NJRE 104 as to her testimony and issue the appropriate protective order.

Since at least one party seeks Ms. Paton's trial testimony, it makes sense in the interests of justice and judicial economy for the court, as the final arbiter, to address these issues now. Should the court order Ms. Paton to testify, then she should be protected from a claim of privilege violation and any adverse consequences therefrom under RPC 1.6(d)(4).

Consequently, short of quashing the subpoena and barring her testimony, Ms. Paton seeks Court guidance through this application on these issues of privilege, applicability, waiver or the court's need to over-ride in the interests of justice.

This motion is brought because Ms. Paton seeks to reconcile her witness obligations with her duty as a lawyer.

LEGAL ARGUMENT

POINT I

Standard of Review

"In general, a defendant in a criminal case is entitled to broad discovery." State v. D.R.H., 127 N.J. 249, 256 (1992). "Discovery is appropriate if it will lead to relevant and material information." State v. Ballard, 331 N.J. Super. 529, 538 (App. Div. 2000). "Evidence is relevant under New Jersey Rule of Evidence 401 if it has 'a tendency in reason to prove or disprove any fact of consequence to the determination of the action.'" State v. Higgs, 253 N.J. 333, 354 (2023) (quoting N.J.R.E. 401). Nevertheless, despite a criminal defendant's general and automatic right to 'broad discovery,' ... this Court also has long held that 'criminal discovery has its limits.'" State v. Ramirez, 252 N.J. 277, 296 (2022) (quoting State v. D.R.H., 127 N.J. 249, 256 (1992)).

Applying to all production subpoenas, Rule 1:9-2 provides that a party may either move to quash or modify a subpoena “if compliance would be unreasonable or oppressive.” A valid subpoena *duces tecum* must specify its subject

... with reasonable certainty, and there must be a substantial showing that [the records] contain evidence relevant and material to the issue. If the specification is so broad and indefinite as to be oppressive and in excess of the demandant's necessities, the subpoena is not sustainable.

Greenblatt v. New Jersey Bd. of Pharmacy, 214 N.J. Super. 269, 275, 518 A.2d 1116, 1120 (App. Div. 1986) (quoting State v. Cooper, 2 N.J. 540, 67 A.2d 298 (1949)).

“[W]hat is unreasonable or unduly oppressive in a given case will depend upon the circumstances presented therein.” In re Grand Jury Subpoena Duces Tecum, 143 N.J. Super. 526, 535 (Law. Div. 1976). “Consequently, there is no talismanic formula upon which we may rely.” Id. Thus, the determination of what discovery request is reasonable and relevant, and what constitutes an unreasonable or unduly burdensome request, must be measured by the trial court on a case-by-case basis. Id.

In the criminal context, Rule 3:13-3(e) describes how the court can balance the defendant’s need for discovery with a need for protection of a witness through a protective order. As an alternative to preclusion, the court may exercise other options as enumerated under Rule 3:13-3(e)(1):

Upon motion and for good cause shown the court may at any time order that the discovery sought pursuant to this rule be denied, restricted, or deferred **or make such other order as is appropriate**. In determining the motion, the **court may consider** the following: protection of witnesses and others from physical harm, threats of harm, bribes, economic reprisals and other intimidation; maintenance of such secrecy regarding informants as is required for effective investigation of criminal activity; **confidential information recognized by law, including protection of confidential relationships and privileges**; or any other relevant considerations. (emphasis added)

Rule 3:13-3(e)(2) describes a procedure a court may employ to determine good cause:

The court may permit the showing of good cause to be made, in whole or in part, in the form of a written statement to be inspected by the court alone, and if the court thereafter enters a protective order, the entire text of the statement shall be sealed and preserved in the records of the court, to be made available only to the appellate court in the event of an appeal.

To find good cause, “[a] trial court considers ‘the totality of the circumstances’ in determining whether good cause exists to grant the motion.” Ramirez, 252 N.J. at 297–98.

Thus, a protective order is justified when discovery will result in some harm to a witness. R. 3:13-3(e)(1); State in Int. of N.H., 226 N.J. 242, 256 (2016) (explaining that the State may apply for a protective order to withhold materials that “would expose witnesses and others to harm”). Another factor the court may consider is privilege. R. 3:13-3(e)(1). “The person asserting the privilege thus bears the burden to prove it applies to any given communication.” Horon Holding Corp. v. McKenzie, 341 N.J. Super. 117, 125116 (App. Div. 2001). Upon the showing of a privilege, the burden shifts to a defendant to demonstrate a sufficient need for the evidence. State v. Pickett, 466 N.J. Super. 270, 304–05 (App. Div. 2021). See also Halbach v. Boyman, 369 N.J. Super. 323, 329 (App. Div. 2004) (“the burden of establishing cause to pierce the privilege rests upon the party who seeks to do so”). The seeking to pierce the privilege must: (1) advance a legitimate need for the evidence; (2) show that the evidence is relevant and material to the issue before the court; and (3) establish that the evidence cannot be secured from a less-intrusive source. In re Kozlov, 79 N.J. 232, 243–44 (1979).

Here, the movant’s claim of harm relates to a threat of privilege violation if she discloses such information to the defendant or the state whether by document or testimony. That harm is the result of her competing legal duties to comply with her obligation as a witness and her duty to her

clients against disclosure. This resulting conflict between these competing duties can be easily reconciled by the court.

Ms. Paton takes no position with respect to relevancy and the need for discovery and her testimony. She leaves that to the parties.

However, to the extent that she is required to provide discovery and testimony, that should be by court order that also protects her through a finding that her compliance therewith is protected by RPC 1.6(d)(4).

POINT II

Because of the attorney client relationships that existed between witness Paton, the victims, Defendant and the Caneiro family members, the information and testimony sought is protected under New Jersey Rule of Evidence (NJRE) 504, Attorney Client Privilege and Rule of Professional Conduct (RPC 1.6) Confidentiality of Information and shifts the burden to the seeking party to justify scope and basis to order disclosure.

Because of the attorney-client relationships that existed between Ms. Paton, the victims, the defendant and the other Caneiro family members, all information and testimony sought from her in this case springs from those relationships. Therefore, it is categorically protected by RPC 1.6 and NJRE 504. Therefore, the obligation to overcome her privilege assertion rests with the defendant and the State. See Pickett 466 N.J. Super at 304-305.

Specifically, A lawyer shall not reveal information relating to representation of a client absent client consent. RPC 1.6(a). While the defendant, Paul Caneiro has waived through counsel any privilege regarding the subpoena response only, that waiver is limited and is not effective as to the other parties. It also leaves unclear the permissible scope, if any, of the State's intended inquiry into facts with the witness.

Further RPC 1.6 imposes a broader duty of confidentiality than the attorney-client privilege embodied in NJRE 504. Twenty-First Century Rail Corp. v. New Jersey Transit Corp., 419 N.J. Super. 343, 359 (App. Div. 2011), rev'd, 210 N.J. 264, 44 A.3d 592 (2012) and Advisory Comm. Op. 695 (Mar. 29, 2004).

These privileges remain after the death of the client, Swidler & Berlin v. United States, 524 U.S. 399, 407 (1998) and after the termination of the representation, State v. Bellucci, 81 N.J. 531, 539 (1980); State ex rel. S.G., 175 N.J. 132, 141 (2003). “[T]he privilege belongs to the client, rather than the attorney.” Fellerman v. Bradley, 99 N.J. 493, 498 (1985). Accordingly, “[t]he waiver of the attorney-client privilege rests solely with the client.” In re Grand Jury Subpoena Issued to Galasso, 389 N.J. Super. 281, 298 (App. Div. 2006). “Absent waiver, the attorney, when called as a witness, must assert the privilege on behalf of the client.” In re Grand Jury Subpoena Issued to Galasso, 389 N.J. Super. 281, 297 (App. Div. 2006).

Because the confidentiality and privilege protections belong to the client, the lawyer cannot waive those privileges. If called upon to divulge protected information or communications here, Ms. Paton must assert these privileges. Thus, Ms. Paton is not at liberty to guess whether an exception applies. Further, requiring her to argue against her clients’ privilege and confidentiality protections would seem to conflict with her fiduciary duty of loyalty to her client to maintain those protections for them.

Rule 3:13-3(e)(1) and State in Int. of N.H., 226 N.J. 242 (2016), recognize a methodology for addressing such a conflict through the broad discretion given the trial court through the use of a protective order protect a witness from harm. A conflict such as presented by Ms. Paton’s dilemma and Hodson’s choice is harm cognizable under the rule that warrants examination of the issue and deployment of a protective order.

Indeed here, if Ms. Paton were to guess and be proven wrong, she may be exposed to civil liability under Baxt v. Liloia, 155 N.J. 190 (1998). Baxt held that while civil action could not rest on a violation of an RPC, the RPC could serve as evidence of a standard, the deviation from which could constitute a breach of the attorney's duty to a client. Recently, the Baxt holding was incorporated into the Model Jury charge 5.51A [Legal Malpractice].

Consequently, a ruling directing the scope of disclosure is necessary to give Ms. Paton and the parties clear guardrails on discovery and testimony consistent with RPC 1.6(d)(4) "to comply with other law" such as a court order. Cf. Evolution AB v. Marra, 474 N.J. Super 356, 365-366 (App. Div. 2023).

POINT III

Because of the Conflict between Privilege and Disclosure, a NJRE 104 Hearing is Warranted to Address the Scope of Disclosure and the Terms of any Protective Order

As noted above, the Public Defender's Subpoena *Duces Tecum* is governed by Rule 1:9-2. Under that Rule, a Motion to Quash is a generally recognized approach to protect a witness and in this case also the witness' clients from disclosure protected information and communications. Rule 1:9-2 and In re Grand Jury Subpoenas, 241 N.J. Super. 18 (App. Div. 1989)

By contrast, in response for disclosure in the secretive Grand Jury process, the courts have noted that a Motion to Quash is generally inadvisable, although not impermissible, in response to a subpoena ad testificandum.

Thus, before the Grand Jury, the lawyer is generally required to appear and assert and justify the privilege after hearing each question. During such a cumbersome and risk of errors prone process, the lawyer is not the final arbitrator. The court is.

Here, Ms. Paton has justified in this application the existence of privilege for the entire body of what she is being asked to disclose and on which she will be required to testify to.

Further, as to a subpoena *ad testificandum*, NJRE 611 vests the Court with broad discretion to efficiently and effectively deal with the privileged issues presented here. If Ms. Paton is an intended witness and a proffer is sought, then it makes sense to address all issues for both sides under NJRE 104 and eliminate Ms. Paton from being caught in the middle solely because of her professional obligations as a lawyer.

Among the issues that need to be addressed prior to disclosure or testimonial response are whether the underlying estate litigation (in which Ms. Paton had no involvement or knowledge) operated as a waiver by which parties and to what extent.

Regarding Keith and Jennifer Caneiro, a determination should be made before an order is issued whether the subject disclosures and related testimony are reflective of the deceased clients' testamentary and Inter vivos intent. If so, does that constitute an implied waiver under Ervesun v. Bank of New York, 99 N.J. Super 162 (App. Div. 1968) and whether that exception to NJRE 504 applies to Ms. Paton's disclosures and testimony as to all the Caneiros including the defendant.

Also necessary is a determination whether the applicability of a NJRE 504 exception extends to broader provisions of RPC 1.6. Michels & Hockenjos, New Jersey Attorney Ethics (GANN 2025), Chapters 15:2-2, b. relationship to the attorney client privilege. If not, Ms. Paton may be required to assert the confidentiality provisions of RPC 1.6 subject to a court order directing a response notwithstanding the existence of same. A court direction in that regard would need to also determine that the protective provisions of RPC 1.6(d)(4) protect such disclosure as being compliant "with other law".

Additionally, if an exception or waiver of privilege does not exist, then the court would need to determine that privilege should be pierced in the interests of justice because the public's right to the truth outweighs its interest in preserving the attorney-client privilege. In the Matter of Kozlov, 79 N.J. at 242-244 and United Jersey Bank v. Wolosoff, 196 N.J. Super. 553, 567-568 (App. Div, 1984); see also, In re Grand Jury Subpoena's, 241 Super at 25 (a discussion of the competing interests between disclosure and privilege).

In Kozlov, the Court identified three factors necessary to piercing the confidentiality and privilege obligations between a lawyer and client.

These are (1) a legitimate need of the party to reach the evidence sought to be shielded; (2) that it is relevant and material to an issue before the court; and (3) that by a fair preponderance of the evidence and all reasonable inferences this information cannot be secured from any less intrusive source.

While Ms. Paton claims RPC 1.6 and NJRE 504 apply to all disclosures and related testimony sought by defendant's counsel, she takes no position with respect to the existence or non-existence of the three Kozlov factors.

Similarly, she takes no position in response to the anticipated trial subpoena from the State. She will abide by the court's decision concerning her obligation to respond.

However, she does make a categorical assertion of privilege here as she must under these circumstances and relationships and thereby seeks a determination from the court that her compelled disclosures do not violate any client duty she may owe.

POINT IV

**Any Order Compelling Movant's Disclosure Should Address
and Conform to Her Duty of Loyalty to her Clients**

As a fiduciary, Ms. Paton has a fundamental duty of loyalty to her clients. Estate of Spencer v. Gavin, 400 N.J. Super. 220, 241-242 (App. Div. 2008). This duty continues despite termination of the client relationship and encompasses the affirmative obligation to act in and look out for the clients' best interests. Id.

In a related physician-patient context, such a duty of loyalty barred a treating physician from acting as an expert against his patient and in support of a defendant physician in a medical malpractice case. Piller v. Kovarsky, 194 N.J. Super. (Law Div. 1984) and Serrano v. Levitsky, 215 N.J. Super 454 (Law. Div. 1986). Both Piller and Serrano were cited by the New jersey Supreme Court in Stigliano v. Connaught Laboratories, Inc., 140 N.J. 305, 314 (1995) and was guided by the distinction in those cases between a treating physician serving as a fact witness and one who also served as an adverse expert against their patient. The Court instructed that treating physicians are in a sense experts when testifying as to what they observed and conclusions they relied on in treating a patient, but in that context are more accurately characterized as fact witnesses. Stigliano, 140 N.J. at 314. The critical point there is that treating physicians must determine the cause of a condition regardless of whether that determination is characterized as fact or opinion. However, the Court only got to that issue because the patient placed their condition at issue and waived the attorney-client privilege. Id.

Similarly, here, the existence of privilege must first be addressed. Once it is, then the character of Ms. Paton's testimony must be examined to determine whether it is akin to fact or opinion and whether it is in her capacity of a fact witness under NJRE 701 or her expert opinion is sought under NJRE 702. If the latter, her fiduciary duty and duty of loyalty would compel exclusion of such testimony.

Conversely, Stigliano, gives an expansive scope to a professional's opinion in the context of a fact witness where the focus is confined to what that professional did for their patient and how and why. By implication, a similar approach should be afforded to a lawyer and a similar conclusion drawn by the court that such testimony is consistent with the lawyer's fiduciary duty and professional role.

CONCLUSION

For the foregoing reasons, nonparty witness Kimberly A. Paton, Esq. respectfully requests that the Court quash or, in the alternative, enter a protective order from a claim of violation of confidentiality and attorney-client privilege obligation or her fiduciary duty of loyalty for her disclosures in this matter.

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By:



Robert B. Hille

Dated: June 23, 2025