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STATE OF NEW JERSEY,	:	SUPERIOR COURT OF NEW JERSEY
	:	MONMOUTH COUNTY COURT
Plaintiff,	:	LAW DIVISION - CRIMINAL
	:	
v.	:	INDICTMENT NO.: 19-02-283-I
	:	PROSECUTOR FILE NO.: 18-4915
PAUL CANEIRO,	:	
	:	**NOTICE OF MOTION**
Defendant.	:	**TO PRECLUDE THE TESTIMONY**
	:	**OF KIMBERLY PATON, ESQ.**

TO: AP Christopher Decker & AP Nicole Wallace
Monmouth County Prosecutor's Office
132 Jerseyville Avenue
Freehold, NJ 07728

PLEASE TAKE NOTICE that on a date set by the Court, or as soon thereafter as counsel may be heard, Monika Mastellone, Esq., attorney for Defendant, Paul Caneiro, shall move before the Honorable Marc C. Lemieux, A.J.S.C., at the Monmouth County Superior Courthouse, 71 Monument Street, Freehold, New Jersey, for an Order precluding the testimony of Kimberly Paton, Esq. The defendant will rely upon oral argument and the enclosed brief in support of this Motion.

/s/ Monika Mastellone
Monika Mastellone, Esq.
Attorney for Defendant

Dated: July 1, 2025

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Plaintiff,	:	LAW DIVISION - CRIMINAL
	:	
v.	:	INDICTMENT NO.: 19-02-283-I
	:	PROSECUTOR FILE NO.: 18-4915
PAUL CANEIRO,	:	
	:	**ORDER PRECLUDING**
Defendant.	:	**THE TRIAL TESTIMONY**
	:	**OF KIMBERLY PATON, ESQ.**

THIS MATTER having been brought before the Court by Monika Mastellone, Esquire, appearing, on behalf of the Defendant, Paul Caneiro, and Christopher Decker and Nicole Wallace, Assistant Prosecutors, Monmouth County Prosecutor's Office, appearing for the State, and the Court having heard arguments of counsel and for good cause shown;

IT IS on this day of 2025, hereby **ORDERED** that defendant's Motion to Preclude the testimony of Kimberly Paton, Esq. is **GRANTED**.

Honorable Marc C. Lemieux, A.J.S.C.

State of New Jersey

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July 1, 2025

Honorable Marc C. Lemieux, A.J.S.C.
Monmouth County Courthouse
71 Monument Park, 3rd Floor
Freehold, NJ 07728

Re: **State v. Paul Caneiro**
Case No. 18-004915 / Indictment No. 19-02-283-I

Motion to Preclude Kimberly Paton, Esq.'s Testimony

Dear Judge Lemieux:

Please accept this letter brief, in lieu of a more formal brief, in support of the defense's Motion to Preclude Kimberly Paton, Esq.'s testimony.

RELEVANT FACTS[1]

Between the years of 2005 and present day, Kimberly Paton, Esq. has represented the following people in the Caneiro family: Keith Caneiro (victim); Jennifer Caneiro (victim); Paul Caneiro (defendant); Susan Caneiro (defendant's wife); and Corey Caneiro (the third brother). In addition, Paton assisted both Paul and Keith, as business partners, with the preparing of certain

[1] These facts are taken in part from Robert Hille, Esq.'s Certification, dated 6/23/25 and various MCPO investigation reports, attached hereto as exhibits.

company related documents for their companies Jay-Martin Systems, Inc. and Jay Martin Consulting, Inc. These documents were actively held in escrow by Paton. According to Tiffany Rivera, the businesses' office manager, Kimberly Paton was their "only business attorney."[2] While Paton has personally met Keith and Jennifer in person, much of her communications with Keith, Jennifer, Paul, Susan, Corey, and Cesar occurred via emails and telephone calls.

With respect to her relationship with Keith, it pertained, in part, to the Trust Agreement in this case, which Paton reviewed and provided Keith Caneiro with advice in 2005. With respect to her relationship with Corey, this relationship directly involved the Trust Agreement in issue once Paul was arrested and Corey became the new trustee of the Trust.

In addition, Paton has engaged with Cesar Caneiro (the father of both the victim Keith and defendant Paul as well as the father-in-law of victim Jennifer and the grandfather of victims [redacted] and [redacted] In part, this engagement centered around Cesar's role as Fiduciary of Keith Caneiro's Estate after his murder.

Notwithstanding this assortment of attorney-client relationships with the victims, the defendant, and the family members of both, the State has indicated a desire to call Paton to testify at trial, as an expert, about the four corners of the trust document. Attorney for Paton, Robert Hille, Esq. does not dispute that these relationships trigger the attorney client privilege (N.J.R.E. 504) and the broader confidentiality requirements under RPC 1.6.

Thus, Mr. Hille seeks "court intervention" prior to Paton providing any testimony at trial in this case. Specifically, Mr. Hille seeks that Paton's testimony be barred at trial, or, that the Court

[2] See Det. Zarillo's report, dated 2/12/19 (page 28/ bates #346).

compel her testimony such that she be protected from adverse consequences of testifying/ disclosing the intertwined privileged information.

To be clear, the defense agrees with the former approach, and has previously expressed, that Paton's testimony should be barred for the same reasons identified by her attorney, Mr. Hille.

RELEVANT PROCEDURAL HISTORY

On November 21, 2018, Paul Caneiro was arrested and charged with Aggravated Arson for allegedly setting fire to his own home, located at 27 Tilton Avenue in Ocean Twp., NJ.. Subsequently, on November 29, 2018, Paul Caneiro was charged with four counts of Murder and another count of Aggravated Arson (and other related charges) for allegedly murdering his brother's entire family: Keith Caneiro and his wife, Jennifer Caneiro, and their two kids, [redacted] and [redacted] And, for allegedly setting fire to their home located at 15 Willow Brook in Colts Neck, NJ. Not only are Paul and Keith related as brothers, but they were also business partners. They owned two businesses together: Square One (formerly Jay-Martin) and EcoStar, both located in the same office in Asbury Park, NJ. The State alleges that Paul had a financial motive to commit these crimes.

On the same date Paul was charged with these murders and additional arson, November 29, 2018, the State issued a Grand Jury subpoena to Kimberly Paton, Esq. seeking "**any/ all records**" relating to (1) Keith Caneiro; (2) Jennifer Caneiro; (3) Paul Caneiro; (4) Susan Caneiro; (5) Square One, Inc; (6) Jay-Martin Consulting, Inc.; and (7) EcoStart Pest Management, Inc. (Exhibit A). The subpoena informed that if the requested documents were provided prior to December 14, 2018, then her appearance at the Grand Jury would be waived.

Notably, the subpoena was captioned "**State v. John/ Jane Doe**" despite the fact that Paul Caneiro was charged this same day, Nov. 29, 2018 (and had already previously been charged with Arson since 11/21/18). It is unclear why the State, when asking Paul's prior attorney to produce privileged records pertaining to him, failed to inform Paton that the request was being made pursuant to an investigation targeting her client/ former client, Paul Caneiro. See R. 1:9 (requiring that the subpoena "**shall state** the name of the court **and the title of the action**) (emphasis added). It is therefore unclear whether, had Paton known this critical information, she would have sought court intervention at that time prior to complying with the subpoena.

Indeed, on December 27, 2018 and January 3, 2019, Paton, through her legal counsel, complied with the subpoena and provided the State with a host of privileged documents. These documents are outlined in MCPO Supplement Report, dated 1/4/19 and amount to 300+ pages of bate stamped documents provided by Paton. (Exhibit B). In addition, Paton provided several privileged communications exchanged via email between herself and Keith Caneiro. Id.

On January 9, 2019, Paton met with Det. Petruzziello, Det Bassinder, and Det. Zarrillo at MCPO for an interview. (Exhibit C). Paton was accompanied by her then-attorney, Paul Nittoly, Esq. During the interview, she explained the history of her attorney-client relationship with Keith, whom she had been working with since 2004-2005. She confirmed at that time that she was aware of the Trust document (established in 1999), because she had reviewed it, however, she did not draft it. She then reviewed it during the interview and indicated that everything 'appeared standard.' Additionally, she explained the communications she had with Keith in 2017 related to making changes to the trust agreement/ document - the very one in issue in this case.

On May 7, 2025, the defense filed a Motion to Preclude Financial Motive Evidence. Therein, the defense took the position that the State's presentation of the financial motive evidence to a jury at trial requires expert testimony. And, therefore, without such expert testimony, the evidence should be precluded. More specifically, the defense argued that the State needed a financial expert to testify about the trust agreement as well as the forensic accounting that was performed in this case. On June 5, 2025, the State responded, contesting whether an expert was required, however, noting that if the Court ruled that an expert was necessary, the State would get an expert.

On June 6, 2025, the State furnished an MCPO Supplemental Investigation Report (dated 5/30/25), which pertained to a trial 'prep meeting' with Kimberly Paton, Esq. (Exhibit D). The report notes that the State met with Paton, who confirmed that she did not draft the Trust Agreement in issue, but that she did review it and that it was a 'typical, standard agreement.' The report also notes that the State requested a copy of Paton's CV.

On June 9, 2025, the defense met with the State at MCPO for an unrelated purpose of addressing an electronic media / discovery issue. During that meeting, however, the defense inquired whether the State was intending to call Kimberly Paton, Esq. at trial, and if so, whether they were intending to call her as an expert witness. The State indicated it was contemplating calling her as an expert to testify about the trust, to which the defense expressed concerns in light of the numerous attorney-client relationships that Paton has with the various witnesses/ parties in this case, including the decedents and including the defendant. The defense also noted that it would be subpoenaing additional documents, including copies of the various retainer agreements if the State was intending to call her.

On June 10, 2025, the parties appeared in court for oral argument pertaining to the Motion to Preclude Financial Motive Evidence. At that time, the State indicated that it was in fact intending to call Kimberly Paton, Esq. as an expert witness to testify about the trust agreement. During a conference, the defense again expressed concerns about Paton's testimony given the aforementioned attorney-client relationships. The State's response was that it was not intending to specifically elicit privileged communications, however, the defense was still concerned that the relationships were too intertwined with her testimony. This notwithstanding, the defense also raised the issue that it does not have any reports authored by, or statements from, Paton, let alone an expert report. The Court then directed the State to provide a 'proffer' of Paton's expert testimony by Wednesday, June 25, 2025.[3]

On June 16, 2025, the defense served Paton/ her attorney with a subpoena requesting copies of the retainer agreements for the various Caneiros and also any electronic communications between Paton and Corey Caneiro.

On June 23, 2025, the defense received the instant Motion to Quash the defense's subpoena from Paton's attorney, Mr. Hille. As noted above, therein, Mr. Hille confirms the various attorney-client relationships that she has had with the numerous members of the Caneiro family, and further confirms that Paton cannot possibly testify in this matter without divulging privileged information. For this reason, Mr. Hille, too, seeks to bar Paton's testimony. In the alternative, however, he seeks intervention from this Court to compel her testimony and protect her from adverse consequences that would arise for breaching confidentiality and privilege.

[3] To date, the defense has not received any proffer or expert report.

LEGAL ARGUMENT

Attorney-client privilege, the oldest privilege "firmly imbedded in our common law[,]" originated out of concern for the "oath and honor of the attorney" and later developed to its present protection of a client's freedom to consult an attorney in confidence. See In re Richardson, 31 N.J. 391, 396 (1960); State v. Kociolek, 23 N.J. 400, 414-15 (1957); In re Selser, 15 N.J. 393, 403-04 (1954). That is, the privilege is designed "to encourage clients to make full disclosure to their attorneys" because in order to prepare a case adequately there must be full and free discussion between a client, his attorney and the attorney's agents. Macey v. Rollins Env. Serv., Inc., 179 N.J. Super. 535, 541 (App. Div. 1981) (quoting Fisher v. United States, 425 U.S. 391, 403 (1976)); Comprehensive Neuro. v. Valley Hosp., 257 N.J. 33, 80 (2024). In turn, this "benefits the public, which 'is well served by sound legal counsel' based on full, candid, and confidential exchanges." Stengart v. Loving Care Agency, 201 N.J. 300, 315 (2010) (quoting Fellerman v. Bradley, 99 N.J. 493, 498 (1985)). Indeed, "the right to counsel would be meaningless if the defendant were not able to communicate freely and fully with the attorney." State v. Land, 73 N.J. 24, 30 (1977).

Our Supreme Court has also expressed the importance of this privilege as follows: "Preserving the sanctity of confidentiality of a client's disclosures to his attorney will encourage an open atmosphere of trust, thus enabling the attorney to do the best job he can for the client." Reardon v. Marlayne, Inc., 83 N.J. 460, 470 (1980); see also In re Gonnella, 238 N.J. Super. 509, 512 (Law Div. 1989). Further, the privilege also allows a lawyer to "work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel." United States v. Nobles, 422 U.S. 225, 237 (1975); In re Grand Jury Subpoenas, 241 N.J. Super. 18, 27 (App. Div. 1989). In fact, our Supreme Court has analogized the sanctity of the attorney-client relationship

with “an intimacy equal to that of the confessional and approaching even that of the marital bedroom.” State v. Sugar, 84 N.J. 1, 12 (1980). Therefore, "the confidentiality of communications between client and attorney constitutes an indispensable ingredient of our legal system." In re Grand Jury Subpoenas, supra, at 27-28.

Significantly, an attorney need not be formally retained by the client in order for the privilege to prevail. The privilege covers confidences imparted by a client in the course of the professional relationship even though the attorney may decide not to take the case, Fox v. Forty-four Cigar Co., 90 N.J.L. 483 (E. & A. 1917), or where an attorney was consulted but was ultimately not retained. Herbert v. Haytaian, 292 N.J. Super. 426, 435-437 (App. Div. 1996) (finding that an attorney-client relationship was nevertheless created). The privilege also extends to documents prepared by an attorney, such as those prepared in furtherance of the duties of an in-house counsel. Nat. Util. Serv. v. Sunshine Biscuits, 301 N.J. Super. 610, 615 (App. Div. 1997).

POINT I

TO BE CLEAR, THE STATE DOES NOT NEED PATON’S TESTIMONY IN THIS CASE; THEY SIMPLY NEED AN EXPERT WHO CAN TESTIFY ABOUT THE TRUST AGREEMENT.

In the defense’s 5/7/25 Motion to Preclude Financial Motive Evidence, the defense contends that the State needs a financial expert to testify to the information anticipated to be presented by Det. Bassinder. This information includes evidence pertaining to the accounting of Paul, Keith, and their businesses’ accounts as well as testimony related to the irrevocable trust agreement that was established between Keith and Paul in 1999. While the State maintains that

they do not need an expert to present the forensic accounting aspect of this case, they did agree to obtain an expert to discuss the terms of the trust agreement.

However, the expert that the State is now seeking to have testify at trial is Kimberly Paton, Esq., the attorney who has represented all of the Caneiros in this case, including both the defendant and the victims, and also including their mutual family members. As a result, and as articulated in Mr. Hille's Motion, the State would need this Court to compel her testimony given that it would require a breach of privilege.

As it relates to any trial testimony, the only information the defense has at this juncture is that she reviewed the trust document in 2019 and again recently, and offered an opinion that it 'appeared' to be a 'standard' trust agreement. To date, the defense has not yet received a proffer nor an expert report nor any statement from Paton that outlines her potential testimony.

As the State has made clear, however, they are only intending to use her to testify to the four corners of the trust agreement. As such, it is evident that any expert could provide this testimony. There is simply no need to choose Paton as the witness for the State's purpose of explaining the terms of the trust agreement – testimony that any expert who reviews it can provide. While Paton may be a convenient choice on the eve of trial since she has already reviewed the document and is previously familiar with it, she certainly is not the appropriate witness.

To pierce the attorney-client privilege, the State must satisfy a 3-part test. Specifically, the State needs to demonstrate that (1) there is a legitimate need for the evidence; (2) that the evidence is relevant and material to an issue before the court; and (3) that the evidence is only accessible through this source and cannot be obtained from any less intrusive source. See In re Kozlov, 79 N.J. 232, 243-44 (1979). Of course, "the burden of establishing cause to pierce the privilege rests

upon the party who seeks to do so." Hallbach v. Boyman, 369 N.J. Super. 323, 329 (App. Div. 2004). Thus, here, the burden is on the State.

While the defense concedes that the general evidence – testimony related to the trust agreement – is legitimately needed, relevant, and material, the defense's position is that **this** evidence i.e. **Paton's testimony** about the trust – is none of those things. That is, the defense obviously contends there is a legitimate need for expert testimony related to the trust because the defense filed the aforementioned Motion seeking to preclude the financial motive evidence, or in the alternative, compel the use of an expert. Likewise, the defense understands the relevance and materiality of the trust.

However, the defense does not understand why the State would – of all the experts in the universe who can testify about a 'standard' 'typical' trust agreement – choose the one witness who happens to have numerous complex layers of involvement with, and attorney-client relationships with, the various Caneiros in this case, including the victims and the defendant. There is simply no legitimate need for Paton's testimony; the need lies with the expert testimony related to the trust, which of course can be presented by any expert. Similarly, there is no special relevance or materiality that Paton is offering with respect to this issue.

Lastly, where the State clearly runs into an issue is with the third prong. Here, it is indisputable that the State can, in fact, obtain this evidence – expert testimony about the 'standard' trust – from a less intrusive source: literally any other expert. It is not the case, here, that the evidence is only accessible through Paton; rather, it is the complete opposite: this evidence is accessible through any expert on finance/ trusts.

In Kozlov, supra, a New Jersey attorney received information from a client that cast doubt on the impartiality of a juror who had participated in a recent criminal trial that had resulted in the conviction of a police chief. 79 N.J. at 234-35. The client had requested that his identity not be revealed. Id. at 235. Kozlov, who had had no involvement in that criminal trial, informed the defendant's attorney of what he had learned, and did not reveal the identity of his client in accordance with the client's request.. Id. at 235-36. The police chief''s attorney then filed an application with the trial court pursuant to R. 1:16-1. Id. at 236. The trial court ultimately held Kozlov in contempt for his refusal to identify the individual who had relayed the information to him (his client). Id. at 237-38. The Supreme Court, after setting forth the three prongs necessary to justify a breach of the attorney-client privilege, "reversed Kozlov's contempt conviction, noting the variety of other **less intrusive avenues** available to the trial court to verify the information of alleged juror misconduct." Halbach, 369 N.J. Super at 329; see also Kozlov, 79 N.J. at 244-45 (discussing the less intrusive options available, including speaking directly to the biased juror).

Here, as in Kozlov, the State has the ability to elicit expert testimony about the 'standard' trust agreement through any other qualified expert. Period. The State therefore has ample less intrusive sources available to it, and is not in any way confined to relying exclusively on the testimony of Paton. Truly, this evidence is accessible through countless other potential experts, and therefore, the State does not need Paton's testimony, nevermind need it so badly that it requires piercing the numerous layers of privilege that exist here.

Worth noting, as Paton readily acknowledges, she did not draft this agreement and is therefore not the author of the trust document in issue in this case. Rather, she reviewed it and offered Keith advice about it in 2005 and again in 2017. She therefore has information related to

this trust document that goes above and beyond the four corners of the document itself, and, this information – as Mr. Hille confirms – is attorney-client privileged.

Again, as Mr. Hille confirms, the information Paton possesses with respect to this trust document exceeds the bounds of what any ordinary expert would know, and expands into the realm of confidential, attorney-client privileged information. In effect, any testimony she may provide would be colored by that knowledge and offered through that biased lense. It is not possible to separate this privileged information from Paton's mind and memory, which is exactly why Mr. Hille argues, and the defense agrees, her testimony should be barred.

POINT II

TO ALSO BE CLEAR, THE DEFENDANT DOES NOT WAIVE THE PRIVILEGE FOR PURPOSES OF THIS PROPOSED TRIAL TESTIMONY.

Pursuant to N.J.S. 2A:84A-20, "communications between lawyer and his client in the course of that relationship and in professional confidence, are privileged, and a client has a privilege (a) to refuse to disclose any such communication, and (b) to prevent his lawyer from disclosing it, and (c) to prevent any other witness from disclosing such communication if it came to the knowledge of such witness (i) in the course of its transmittal between the client and the lawyer, or (ii) in a manner not reasonably to be anticipated, or (iii) as a result of a breach of the lawyer-client relationship, or (iv) in the course of a recognized confidential or privileged communication between the client and such witness." Additionally, the "privilege shall be claimed by the lawyer unless otherwise instructed by the client or his representative[.]" Ibid.

Here, there is no question that Paul and Paton held an attorney-client relationship. First, Paton prepared estate planning documents for Paul in 2005. Second, when Paton reviewed the trust

document and gave Keith advice pertaining to this trust agreement in 2005, this relationship extends, impliedly, to Paul, who was assigned the trustee in that agreement. Third, when Keith contacted Paton in 2017 to make changes to the trust agreement, there was likewise an implied relationship with Paul, who was the focus of that change: to remove him as trustee and replace him with Jennifer's sister. Fourth, it is also clear that Paton assisted Paul and Keith's businesses in preparing certain documents and thereafter holding them in escrow; as such, she represented Paul in this capacity as well. And finally, as reflected in the recorded jail calls provided by the State, there were numerous occasions where Paul, after he was arrested and charged in the instant matter, either did, or attempted to, make contact with Paton regarding the trust. At a minimum, these most recent contacts (or attempted contacts) occurred on or about 12/5/18, 12/10/18, 1/14/19, 1/15/19. On these occasions, Paul asks his wife, Susan Caneiro and/or his office manager, Tiffany Rivera, to make contact with Paton on his behalf.

Importantly, the statute defines "client" to mean "a person . . . that, directly or through an authorized representative consults a lawyer or the lawyer's representative for the purpose of retaining the lawyer or securing legal service or advice from him [or her] in his [or her] professional capacity[.]" N.J.S. 2A:84A-20(3). As such, privilege exists between Paul and Paton – not only as a result of her personal dealings with Paul, but also as a result of her relationship with the businesses owned by Paul and Keith. As a result, there is no basis for Paton to breach this privilege by testifying.

Notably, inadvertent disclosure of a communication by its mistaken inclusion in discovery materials does not affect a waiver. See Comprehensive Neuro. v. Valley Hosp., 257 N.J. 33, 83 (2024); Trilogy Comm. v. Excom. Realty, 279 N.J. Super. 442, 443-446 (Law Div. 1994); State

v. Blacknall, 335 N.J. Super. 52, 59 (Law Div. 2000). Likewise, the confidentiality of the relationship and the ability to invoke the privilege are not destroyed by the presence of a witness who came to know the communication in the course of transmittal between a lawyer and his client. N.J.R.E. 504(1)(c)(i). See also State v. Loponio, 85 N.J.L. 357 (E. & A. 1913) (a jailhouse scrivener's transcription of a message for the purpose of retaining an attorney for an illiterate defendant); State v. Krich, 123 N.J.L. 519 (Sup. Ct. 1939) (secretarial function). Nor does the presence of an unanticipated eavesdropper destroy the requisite quality of confidence. N.J.R.E. 504(1)(c)(ii). To be sure, N.J.R.E. 504(3) presumes a communication made between a lawyer and his client in the course of a professional relationship to have been made in confidence.

Thus, the fact that Paton already disclosed privileged communications/ documents does not in any way weaken the strength of the privileges that still exist here. The original disclosure to the State should have not occured in the manner that it did, and nor should her testimony at trial be permitted. Finally, while there are exceptions described in N.J.S. 2A:84A-20(2), none of them apply here. Accordingly, there is no basis to breach privilege and to be clear, Paul Caneiro does not waive privilege for purposes of any trial testimony.

POINT III

PATON'S TESTIMONY MUST BE EXCLUDED BECAUSE IT IS RIDDLED WITH, AND INHERENTLY TAINTED BY, ATTORNEY-CLIENT PRIVILEGED INFORMATION.

As Paton's attorney readily identifies, "Because of the attorney-client relationships that existed between Ms. Paton, the victims, the defendant and other Caneiro family members, all information and testimony sought from her in this case springs from those relationships." (Hille brief, 6). That is, the attorney-client privilege is triggered here "for the entire body of what she is

being asked to disclose and on what she will be required to testify." Id. at 9. As Hille further contends, all information and testimony "is categorically protected by RPC 1.6 and NJRE 504." Id. at 6. As such, Hille contends that "the obligation to overcome [Paton's] privilege assertion rests with the defendant **and the State**." Ibid. (Emphasis added).

However, the defendant, too, is seeking to bar Paton's testimony for the very reasons Hille identifies as problematic. Thus, if there is anyone who carries a burden with respect to overcoming the privilege, it is the State because the State is the party seeking to call Paton as a witness at trial. The defense maintains that the State cannot meet this burden since, as discussed supra in Point I, the State does not need Paton's testimony for any real purpose. The State is not offering her as a fact witness; rather, they merely wish to have her testify as an expert regarding the Trust Agreement. As argued above, any expert can do this, and therefore, there is no need to place Paton in a position where she is piercing and breaching all sorts of privileges with various different people, including both the defendant and victims in this case – as well as of related, non-parties to this case.

While Paton's testimony is protected and privileged pursuant to N.J.R.E. 504, so too are the documents and communications that were previously supplied by her to the State, and subsequently to the defense. That is, both oral and written communications between an attorney and his client are protected by N.J.R.E. 504. See Coyle v. Estate of Simon, 247 N.J. Super. 277, 281 (App. Div. 1991); Kanengiser v. Kanengiser, 248 N.J. Super. 318, 342, n. 6 (Law Div. 1991); Weingarten v. Weingarten, 234 N.J. Super. 318, 329 (App. Div. 1989); Sicpa North America v. Donaldson Enterprises, Inc., 179 N.J. Super. 56 (Law Div. 1981); Roe v. Roe, 253 N.J. Super. 418, 433 (App. Div. 1992); Hannan v. St. Joseph's Hosp., 318 N.J. Super. 22, 27-28 (App. Div. 1999)

Thus, email communication between attorney and client during the course of a professional relationship and in confidence is protected. Seacoast Builders Corp. v. Rutgers, 358 N.J. Super. 524, 553 (App. Div. 2003). Similarly, it is a well-settled principle that documents which are given to an attorney for the purpose of obtaining legal advice, which are protected by some other privilege in the hands of the client, are also protected in the hands of the attorney. Fisher v. United States, 425 U.S. 391, 405 (1976).

As Hille also correctly points out, the attorney-client privilege remains after the death of the client as well as after the termination of representation. (Hille brief, 7) (citing Swidler & Berlin v. United States, 524 U.S. 399, 407 (1998); State v. Bellucci, 81 N.J. 531, 539 (1980); State ex rel. S.G., 175 N.J. 132, 141 (2003). "Knowing that communications will remain confidential even after death encourages the client to communicate fully and frankly with counsel. . . . Posthumous disclosure of such communication may be as feared as disclosure during the client's lifetime." Swindler & Berlin, 524 U.S. at 407. Because the "privilege belongs to the client, rather than the attorney[,]" the "waiver of the attorney client-privilege rests solely with the client." (Hille brief, 7) (citing Fellerman v. Bradley, 99 N.J. 493, 498 (1985); In re Grand Jury Subpoena Issued to Galasso, 389 N.J. Super. 281, 298 (App. Div. 2006).

It follows that the client exclusively controls the decision whether or not the privilege should be voluntarily waived in a given circumstance. State v. Schubert, 235 N.J. Super. 212, 220 (App. Div. 1989), certif. den. 121 N.J. 597 (1990). Regrettably, however, and despite the confines of N.J.S. 2A:84A-20, at no point in time was permission sought or obtained from Paul prior to Paton furnishing and disclosing privileged information. Likewise, notwithstanding Keith and Jennifer's status as deceased, there is no indication that any permission was sought or obtained

from their "personal represenative[s]" as required by statute. See ibid. As a result, Paton had an obligation to "claim[] the privilege" on behalf of her clients rather than turning over privileged documents and communications in breach of that obligation.

Importantly, therefore, absent a waiver, the attorney must assert the privilege on behalf of the client. See ibid (citing Galasso, 389 N.J. Super. at 297). Hille also explains that "requiring [Paton] to argue against her clients' privilege and confidentiality protections would seem to conflict with her fiduciary duty of loyalty to her clients to maintain those protections for them." (Hille brief, 7). The problem here is that this fiduciary duty not only extends to Paul, the defendant, but also to the victims, Keith and Jennifer, and also to their shared family members, Susan, Cesar, and Corey. There is no question that this cross section of overlapping fiduciary duties, conflicts of interests, and privilege is not meant to, and nor should it, be breached simply so that the State can present her 'expert' testimony. As already underscored, the State can get literally any other expert to accomplish the same goal.

Similarly, as Hille also points out, "As a fiduciary, Ms. Paton has a fundamental duty of loyalty to her clients." (Hille brief, 11). Here, it would absolutely be a conflict for Paton to testify, as an expert, against her client, Paul Caneiro. As Hille cites, our New Jersey Supreme Court has affirmed that this type of testimony presents a clear conflict. Ibid (citing Stigliano v. Connaught Laboratories, Inc, 140 N.J. 305, 314 (1995). Again, as Hille identifies, if the State seeks to offer Paton as an expert witness under NJRE 702, which is exactly what the State is seeking to do here, "her fiduciary duty and duty of loyalty would compel exclusion of such testimony." Ibid; see also Piller v. Kovarsky, 194 N.J. Super. (Law Div. 1984) and Serrano v. Levitsky, 215 N.J. Super 454 (Law. Div. 1986).

In a similar vein, with very limited exceptions, Rule of Professional Conduct 3.7 prevents a lawyer from acting as an "advocate at a trial in which the lawyer is likely to be a necessary witness." RPC 3.7. This rule, though not expressly applicable to the present situation, is nonetheless germane in the foundational concerns which underpin it. An attorney serving the dual role of both advocate and witness has the clear potential to disserve the client and mislead the trier of fact, and a jury may well give short shrift to a party whose testimony is contradicted by his own lawyer. See ABA Model Rules of Professional Conduct Rule 3.7, comment (2000). As such, there are serious N.J.R.E. 403 implications here, as the jury will surely be left wondering why the defendant's own attorney is taking the stand against him at trial.

POINT IV

IN THE ALTERNATIVE, IF THE COURT PERMITS PATON TO TESTIFY, THEN THE INFORMATION SUBPOENAED BY THE DEFENSE IS RELEVANT DISCOVERABLE MATERIAL THAT MUST BE TURNED OVER.

To be clear, the privilege sought to be protected by Paton's attorney, Mr. Hille, has already been pierced in this case. Once the State subpoenaed the information back in November 2018, and Paton provided over 300 pages of information to the State, the privilege was pierced and confidential information was disclosed to the State, and thereafter to the defense once it was turned over in discovery. This notwithstanding, as discussed supra, an inadvertent or erroneous disclosure does not result in a waiver of privilege. See, e.g., Comprehensive Neuro. v. Valley Hosp., 257 N.J. 33, 83 (2024); Trilogy Comm. v. Excom. Realty, 279 N.J. Super. 442, 443-446 (Law Div. 1994); State v. Blacknall, 335 N.J. Super. 52, 59 (Law Div. 2000).

However, upon any determination that Paton is permitted to testify in this case, her testimony cannot be limited in a fashion that precludes the defense from then cross examining Paton on probative information relevant to the defense. That is, by calling Paton to testify, the State is opening the door to allow the defense to question Paton about relevant and related issues. As a result, neither the State, nor Paton, have the right to then limit or shield access to other parts of the same information once it has already been disclosed. "Courts generally afford a narrow construction to claims of privilege in recognition of the fact that upholding a privilege can result in suppression of the truth." Hallbach, 369 N.J. Super. at 328 (citing Kinsella v. Kinsella, 150 N.J. 276, 294 (1997)); see also Metalsalts Corp. v. Weiss, 76 N.J. Super. 291 (Ch. Div. 1962); Ervesun v. Bank of New York, etc., 99 N.J. Super. 162, 168 (App. Div. 1968); Balazinski v. Lebid, 65 N.J. Super. 483 (App. Div. 1961).

The defense, here, simply seeks additional/ supplemental information that was not previously supplied, but which is directly relevant to what has already been supplied – and for the ability to cross examine her regarding the contents therein. No new privilege is being pierced; rather, this information is sought and discoverable in an effort to have a complete record, rather than a partial record, of what relevant information exists. And, to use that information, to cross examine and to present a full defense on behalf of the defendant. See, e.g., State v. Garcia, 195 N.J. 192, 205-206 (2008) (addressing whether a defendant "was deprived of his constitutional right to a 'meaningful opportunity to present a complete defense'"); State v. Medina, 242 N.J. 397, 412 (explaining that the Sixth Amendment and Article 1, Para 10 of the New Jersey Constitution "guarantee a criminal defendant the right to confront the witnesses against him" through the "rigors of cross examination" because it is "an essential attribute of the right to a fair trial" and "secures for a defendant a fair opportunity to defend against the State's accusations"); State v. P.H., 178

N.J. 378 (stating that due process "requires that the accused in a criminal proceeding be given 'a meaningful opportunity to present a complete defense'" and that one of "the most fundamental of procedural protections afforded a criminal defendant is the right to confront and cross-examine accusing witnesses"); State v. Pickett, 466 N.J. Super. 270, 302-03 (App. Div. 2021).

Therefore, the concern that there is "harm" that would result from "her competing legal duties to comply with her legal duties to comply with her obligation as a witness and her duty to her clients against disclosure" becomes moot if she were to testify. Given the release of 300+ pages worth of documentation containing privileged information and/ or communications, this concern of "harm" is no longer applicable. Additionally, neither the client nor the lawyer may refuse to disclose the fact of representation since the retention of the lawyer and the identity of the client are generally not privileged communications. State v. Toscano, 13 N.J. 418 (1953); Gannet v. First National State Bank of N.J., 410 F. Supp. 585 (D.N.J.), aff'd 546 F.2d 1072 (3d Cir. 1976). To the same end, it appears settled that attorney fee information is not covered by the privilege since it is non-communicative and non-confidential. See Biunno, et al, N.J. Evidence Rules - Annotated (Rule 504 Comment, at 466) (2025). Thus, the defense's request for copies of retainer agreements – containing confirmation of representation and fee amounts – is hardly much more confidential than what has already been disclosed and provided.

Additionally, regardless of the State's purpose in calling Paton, once the State has elected to do so, and the privilege is pierced on the stand to obtain that testimony, then the State has opened the door to whatever other relevant information this witness possesses. That is, if the State is going to pursue the extreme measure of forcing Paton's testimony despite the various layers of privilege,

then the defendant is entitled to cross examine Paton on the universe of relevant information she possesses, especially as it pertains to his defense.

Indeed, attempts to limit the testimony of an attorney-witness may have the unintended effect of limiting the client's ability to fully confront the attorney-witness, thereby unnecessarily hampering the client's ability to mount a defense. Such attempts to limit the testimony of an attorney-witness are problematic, because none of an attorney's actions in relation to a client take place "in a vacuum." Aysseh v. Lawn, 186 N.J. Super. 218, 219 (App.Div. 1982). Instead, these actions necessarily reveal a client's directives and intentions. Id. at 220. Offering the testimony of an attorney-witness, even for a purpose unrelated to attorney-client communications, necessarily implicates "an inquiry into the circumstances surrounding the fact concerning which [the attorney] testifie[s]." Id. (internal citations omitted).

Moreover, as noted supra, our courts have recognized that the privilege cannot result in the suppression of evidence as that would create a "war with the truth." United Jersey Bank v. Wolosoff, 196 N.J. Super. at 561. Accordingly, once Paton takes the stand in this case, the defense should not be limited in its ability to advance the truth before the jury, especially when it is directly related to the defendant's defense.

POINT IV

ADDITIONALLY, PATON'S TESTIMONY OPENS THE DOOR TO HER CLEAR BIAS IN FAVOR OF THE STATE.

Curiously, while Paton (through her attorney) cites the applicable discovery rule and associated caselaw concerning disclosure of confidential/ privileged information, Paton only seeks to apply the law when it is defense counsel who seeks access to the information. That is, almost

seven years ago, when the State issued its subpoena to Paton seeking a wide variety of confidential / privileged information, that information was readily handed over to the State without any court intervention. At no point, when the State sought this highly sensitive information, did Paton object, file a motion to quash the subpoena, seek a protective order, or raise any concerns whatsoever. Only when the defense has sought access to supplemental information directly related to the State's initial request, has Paton raised an objection. It is seriously confounding to the defense that this "information and testimony" is "**categorically** protected by RPC 1.6 and NJRE 504" and yet, 300+ pages of information were almost immediately furnished to the State upon request. It is further troubling to the defense that Paton is so concerned about the implications of RPC 1.6(d)(4) only when the defense requests information, but not at all when the State requests information that is clearly confidential and privileged in substance and form.[4]

In part, the issue becomes: if Paton testifies, the defense has the right to cross examine Paton on this bias. See State v. Scott, 229 N.J. 469. State v. Scott, 229 N.J. 469, 482 (2017) ("[It] is well established, that cross-examining witnesses in criminal trials based on their bias towards the accused [or the State] is permitted). Importantly, bias can be conscious, intentional or subconscious, unintentional. See ibid (defining bias as "the relationship between a party and a witness which might lead the witness to slant, unconsciously or otherwise, his testimony in favor of or against a party"). Certainly, once the State puts Paton on the stand to testify against Paul Caneiro at trial, "[t]he Confrontation Clause permits a defendant to explore, in cross-examination, a prosecution witness's alleged bias." State v. Bass, 224 N.J. 285, 301 (2016). "As the United States Supreme Court has observed, 'the exposure of a witness' motivation in testifying is a proper

[4] To date, the defense has not yet received copies of the defendant's own retainer agreement(s), as requested by the defense.

and important function of the constitutionally protected right of cross-examination.'" Ibid (quoting Delaware v. Van Arsdall, 475 U.S. 673, 678–79 (1986)). And, the only way the defense can competently and zealously effectuate this line of cross examination is to discuss the instant privileged information.

CONCLUSION

For the forgoing reasons, the defense respectfully requests that the defendant's Motion to Preclude the Testimony of Kimberly Paton, Esq., be granted.

Sincerely,

/s/ Monika Mastellone
Monika Mastellone, Esq. 122942014

/s/ Andy Murray
Andy Murray, Esq. 007752008

CC: AP Christopher Decker; AP Nicole Wallace