

NEW JERSEY STATE BAR ASSOCIATION

New Jersey Law Center

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STATE OF NEW JERSEY,

Plaintiff-Appellant,

vs.

GEORGE E. NORCROSS, III,  
PHILIP A. NORCROSS, WILLIAM  
M. TAMBUSSI, DANA L. REDD,  
SIDNEY R. BROWN, and JOHN J.  
O'DONNELL,

Defendants-Respondents.

CRIMINAL ACTION

ON APPEAL FROM A FINAL ORDER  
DISMISSING INDICTMENT WITH  
PREJUDICE

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION

DOCKET NO.: A-1833-24T5

ON APPEAL FROM SUPERIOR  
COURT OF NEW JERSEY  
CRIMINAL DIVISION, MERCER  
COUNTY

INDICTMENT NO.: 21-05-73-S

SAT BELOW:

HON. PETER E. WARSHAW, P.J.Cr.

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**BRIEF OF *AMICUS CURIAE***  
**NEW JERSEY STATE BAR ASSOCIATION**

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Date Submitted: July 22, 2025

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## **PRELIMINARY STATEMENT**

As a matter of seeming first impression in New Jersey, this appeal presents a vital question for lawyers practicing law within the strictures of the Supreme Court of New Jersey's rules governing professional behavior: May an attorney engaged in the provision of bona fide legal services to a client be subject to criminal prosecution absent a pleading requirement compelling demonstration of a conscious effort by the attorney to further the charged criminal enterprise? For multiple reasons, the answer is: No. The mens rea for an attorney's criminal conduct should require more than proof of the lawyer's good faith provision of legal services to a client. A heightened proof requirement is essential to segregate, and identify, that the attorney's prime intent was to further the criminal purpose when the charged conduct arises during the delivery of legal services to a client.

It is axiomatic that a lawyer's representation of a client does not constitute endorsement of the client's views or activities. New Jersey Rules of Professional Conduct ("RPC") 1.2(b). That understanding is a hallmark of the modern New Jersey Rules of Professional Conduct adopted in 1984. Of equal, and balancing, import is the RPCs' plain direction that an attorney's counselling or assistance to a client in conduct that the lawyer knows is criminal or fraudulent is anathema. RPC 1.2 (d) (a "lawyer shall not counsel or assist a client in conduct that the lawyer knows is illegal, criminal or fraudulent . . . but a lawyer may counsel or assist a client in a good faith

effort to determine the validity, scope, meaning or application of the law”). Complementary rules advance themes that an attorney owes a duty of loyalty to the client and the expectation that non-frivolous advancement of law and facts with zealous advocacy are within expected ethical bounds, while balancing larger public policy demands.

The New Jersey Constitution vests the state Supreme Court with exclusive jurisdiction over the regulation of attorney conduct in the practice of law. NJ Const. art. VI, § 2, ¶ 3. The Court’s RPCs provide the framework for assessing the bona fide practice of law by attorneys and logically should guide any determination whether an attorney providing legal services to a client is merely acting within the good faith practice of law and meeting known ethical bounds and obligations, or acting with an individual purpose to further a criminal enterprise. When considering how the mens rea element in New Jersey’s Criminal Code should apply in circumstances involving an attorney’s delivery of legal services to a client, the Legislature would have understood the constitutional assignment of duties. Constitutional conflict is presumed to be something the Legislature would prefer avoided. Thus, the mens rea element comfortably permits, indeed requires, special proofs when charging attorneys delivering legal services to a client because that context matters greatly in the determination of personal intent. Lawyers should be able to act in good faith fulfillment of their professional duties without fear of

criminal prosecution curtailing zealous advocacy and the provision of advice to a client.

In the civil context, heightened proof of intentionality is already required before an attorney providing legal services to a client may be responsible for damages to a third party. How could a lesser mens rea standard be justified in the criminal setting? To ask the question suggests its answer. It cannot be allowed while still ensuring that lawyers can adequately represent their clients without fear of inadvertently risking criminal liability or steering so far from it that the client's entitlement to rigorous advocacy and good-faith testing of the law would be curtailed. Zealous advocacy should not be limited. Similarly, lawyers acting in good faith can still be duped by the duplicity of clients but should not be indicted for it without the lawyer's own purposeful intent to further the criminal enterprise. It cannot be that civil liability requires a higher mens rea showing than does a criminal proceeding when the setting for the conduct charged involves a lawyer engaged in the bona fide delivery of legal services to a client. Issuance of an indictment should require demonstration of a conscious effort—purposeful intentionality—by the attorney to further a criminal enterprise, otherwise the attorney's conduct in the good faith delivery of legal services to a client should not subject the attorney to criminal charges.



## **INTEREST OF THE AMICUS CURIAE**

The New Jersey State Bar Association (“NJSBA”) is an avid advocate for members of the New Jersey bar. As the largest legal organization in the state, the NJSBA serves, protects, fosters and promotes the personal and professional interests of over 15,000 members of the legal profession.

The NJSBA has a special interest in this matter because the outcome will directly affect a foundational issue in an attorney’s everyday practice of law: the ability to zealously represent their clients without fear of criminal prosecution. Attorney members of the NJSBA routinely advocate and strategize to ensure their clients’ rights and interests are protected as fully as possible within the boundaries of the law and the Rules of Professional Conduct. Their clients may be involved in other activities beyond the scope of representation, but that should not be determinative of the attorney’s culpability. It is critical to attorneys and central to the NJSBA’s mission to have clear guidance from the Court that attorneys cannot be subject to criminal penalties for providing bona fide legal services on a good faith basis.

## **PROCEDURAL HISTORY/STATEMENT OF FACTS**

NJSBA respectfully refers the Court to the briefing of the parties for a fulsome procedural history and recitation of the facts. NJSBA enters this action as amicus curiae for the sole and limited purpose of addressing the pleading standard that

should apply when courts consider criminal charges brought by the State against an attorney engaged in the good faith practice of law. The recommended standard is clear. NJSBA takes no position on the Appellate Division's application of that standard to the facts of this case.

## **ARGUMENT**

**A. The New Jersey Rules of Professional Conduct, which guide and restrain lawyers' conduct, provide the relevant yardstick for assessing a lawyer's intent to engage in the good faith delivery of services in the practice of law, as opposed to acting with conscious intent to further an unlawful enterprise.**

Supervision over the practice of law is the bailiwick of the New Jersey Supreme Court as decreed by the state Constitution. Application of LiVolsi, 85 N.J. 576, 585 (1981). In discharging that function, the Court regulates the practice of law, from attorney entry through discipline of licensed attorney's conduct and practice. NJ Const. art. VI, § 2, ¶ 3; see also McKeown-Brand v. Trump Castle Hotel & Casino, 132 N.J. 546, 556 (1993) ("This Court's power to regulate attorneys is exclusive." (citing LiVolsi, 85 N.J. at 583)).

Pursuant to its constitutional authority, the Court adopted the RPCs. See Borteck v. Riker, Danzig, Scherer, Hyland & Perretti LLP, 179 N.J. 246, 251 (2004). The RPCs create the profession's ethical framework guiding an attorney's representation of clients, enunciating the duties that ensure protection of clients, and establishing appropriate behavior with the courts and among counsel. The attorney-

client relationship, “is governed both by the Rules of Professional Conduct and the Supreme Court’s exclusive jurisdiction to regulate the conduct of attorneys.” Kamaratos v. Palias, 360 N.J. Super. 76, 84 (App. Div. 2003) (citing NJ Const. art. VI, § 2, ¶ 3). The system of attorney discipline enforces attorney obligations through control over licensure.<sup>1</sup>

The RPCs guard against attorney misconduct. Basic principles are made express so lawyers know what must be done or may not be done. Naming just a few is illustrative of the point. Lawyers shall not “assist a client in conduct that the lawyer knows is illegal, criminal, or fraudulent.” RPC 1.2(d). Lawyers shall not knowingly make false or misleading statements to the Court. RPC 3.3(a). Lawyers shall not destroy or conceal evidence, counsel a witness to falsely testify, or knowingly disobey an obligation under the NJ RPCs. RPC 3.4. Lawyers shall not knowingly make a false statement to a third person or fail to disclose a fact to a third person when such disclosure is necessary to avoid assisting a criminal or fraudulent act by a client. RPC 4.1(a).

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<sup>1</sup> “New Jersey’s disciplinary system serves as an effective deterrent to unethical behavior” and “has been recognized as ‘one of the most demanding disciplinary systems in the nation.’” Baxt v. Liloia, 155 N.J. 190, 203 (1998) (citing James R. Zazzali, Disciplining Attorneys: The New Jersey Experience, 1 Geo. J. Legal Ethics 659, 661 (1988)). Moreover, the RPCs require self-enforcement within the profession. A lawyer who knows that another has violated the RPCs such that the lawyer’s honesty, trustworthiness, or fitness as a lawyer is called into question is required to inform the appropriate professional authority about the RPC violation. See RPC 8.3(a).

In fact, any violation of the RPCs constitutes “professional misconduct,” RPC 8.4, and attorney discipline is available for professional misconduct. Violation of the NJ RPCs has resulted in disbarment, Matter of Legato, 229 N.J. 173, 189 (2017), suspension from the practice of law, Matter of Rinaldo, 155 N.J. 541, 542 (1998), lesser discipline, such as censure and reprimands, as well as the imposition of monetary sanctions, In re Giannini, 212 N.J. 479, 484 (2012). The Court imposes disciplinary sanctions and penalties where necessary “to preserve the confidence of the public in the bar,” In re Cohen, 220 N.J. 7, 11 (2014), and to “foster continued faith in the legal profession as a whole,” In re Torre, 223 N.J. 538, 549 (2015); see also Baxt, 155 N.J. at 202 (“The New Jersey disciplinary system is also designed to protect the public and the integrity of the profession.”) (internal quotation marks omitted); Matter of Wilson, 81 N.J. 451, 456 (1979) (“the principal reason for discipline is to preserve the confidence of the public in the integrity and trustworthiness of lawyers in general.”).

Of particular relevance here is the recognition that the State’s RPC framework “provides the courts and parties with powerful and effective tools for ensuring that attorneys file and pursue litigation in good faith and for its proper purposes.” LoBiondo v. Schwartz, 199 N.J. 62, 100 (2009). When dismissing civil claims asserted against lawyers, the courts have consistently held that New Jersey’s RPCs are the appropriate vehicle to hold lawyers accountable for their misconduct. See id.

at 97 (“Our principal means of regulating the behavior of attorneys are found in our Rules of Professional Conduct (RPC ) and the disciplinary system that we use to enforce them.”); Loigman v. Twp. Comm. of Twp. of Middletown, 185 N.J. 566, 586–87 (2006) (“The litigation privilege does not immunize an attorney from disciplinary sanctions under the New Jersey Rules of Professional Conduct.” (citing Hawkins v. Harris, 141 N.J. 207, 215 (1995))); see also Heffernan v. Hunter, 189 F.3d 405, 413 (3d Cir. 1999) (“Counsels’ conduct within the scope of representation is regulated and enforced by disciplinary bodies established by the courts. Abuses in litigation are punishable by sanctions administered by the courts in which the litigation occurs.”).

Thus, the RPCs provide ethical standards that guide attorneys in the good faith delivery of legal services to a client and obligations toward the court, counsel, and third parties. They further provide the relevant measure of good faith performance of legal services while protecting the public and the courts from attorneys who run afoul of ethical standards. Present enforcement of the ethics code through the attorney discipline system is an effective tool to regulate attorney conduct. It is the immediate and logical yardstick for any assessment of an attorney’s wrongful intent in the context of improper use of a lawyer’s license when acting in the capacity of an attorney servicing a client.

**B. Lawyers may not be held civilly liable for actions taken as an attorney when engaged in the good faith provision of legal services and acting within the bounds of zealous advocacy, and neither should they be held to a lesser mens rea standard and charged criminally for engaging the same good faith licensed activity.**

That an attorney is expected to engage in zealous advocacy for a client is well recognized in civil and disciplinary settings. LoBiondo, 199 N.J. at 73 (stating that “attorney’s primary duty is to be a zealous advocate for his or her own client”); In re Simon, 206 N.J. 306, 318 (2011) (by violating RPC 1.7(a)(2), attorney “jeopardiz[ed] his duty to represent [his client] with the utmost zeal”).<sup>2</sup>

The adversarial justice system relies upon zealous representation that permits lawyers to advocate for their clients with vigor such that judges can make informed and reasoned decisions that vindicate the rule of law. See Legal Services Corp. v. Velazquez, 531 U.S. 533, 545 (2001) (“An informed, independent judiciary

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<sup>2</sup> In numerous respects the RPCs recognize the paramountcy of the lawyer’s duty to their client and permit actions in the good faith provision of services that fulfill that obligation. See, e.g., Balducci v. Cige, 240 N.J. 574, 593 (2020) (RPC 1.4(c) imposes upon a lawyer a duty to “explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation); In re Supreme Ct. Advisory Comm. on Pro. Ethics Opinion No. 697, 188 N.J. 549, 560 (2006) (RPC 1.7 imposes upon a lawyer a duty not to represent a client when there exists a conflict of interest); A. v. B., 158 N.J. 51, 56 (1999) (the RPCs establish “fundamental obligations of lawyers,” including a duty of confidentiality (RPC 1.6(a)) and a duty to inform clients of material facts (RPC 1.4(b))); see also DeShields v. Shannon, 338 F. App’x 120, 125 (3d Cir. 2009) (attorneys are “required to think creatively, act resourcefully, and advocate their client's causes with zeal and ethical sensitivity”).

presumes an informed, independent bar.”). And, the RPCs appropriately constrain and curb potential lawyer misconduct, eliminating risk that lawyers who engage in unethical conduct will go unchecked. The framework created in the Rules of Professional Conduct and the mechanisms for discipline created by the Supreme Court in the regulation of the practice of law provide comfort that the protection of the public will not be lessened. See LoBiondo, 199 N.J. at 108.

If an attorney is forced to operate under the threat of criminal liability in connection with the good faith provision of legal services to their client, that threat operates as a deterrent to an attorney meeting his or her ethical obligations. Our Supreme Court recognized that truism already. Concern about chilling the attorney’s role as advisor and advocate for the client has been a foremost motivation for the Court. In the civil context, the Court has already determined that if attorneys are forced to operate under the threat of civil liability for providing good faith legal services that advance their clients’ interests, the attorney will not “be able to faithfully, fully and zealously represent his or her client without fear of reprisal from others.” Id. at 100. For this reason, the Court has “been reluctant to permit a nonclient to sue an adversary’s attorney.” Ibid. Presciently, the Court warned of the real risk that if liability can flow from the routine provision of legal services that “will become a weapon used to chill the entirely appropriate zealous advocacy on which our system of justice depends.” Id. at 101. It is for that reason when a “lawyer who

merely in good faith and without any evil motive assists his client's cause" the lawyer cannot be held civilly liable for the provision of legal services. Id. at 110. Conversely, where a nonclient can demonstrate "that the attorney's primary purpose [for pursuing an action] was an improper one" civil liability may flow to the attorney. Id. at 113.

Accordingly, a heightened wrongful intentionality standard already permeates the ability to bring civil liability actions against attorneys engaged in the representation of clients.<sup>3</sup> New Jersey courts have repeatedly held that an action should only be able to proceed against a lawyer engaged in the legal representation of a client when a complaint can support allegations that the lawyer's conduct fell outside the good faith provision of legal services.

Although articulated and adopted by the State Supreme Court in the civil context, those principles fit with even greater force when the cudgel being wielded is the threat of possible criminal charges for providing legal services in good faith to a client. It is illogical and would lead to an absurd result if any lesser mens rea standard than a purposeful intentionality was applied when assessing an attorney's

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<sup>3</sup> See, e.g., LoBiondo, 199 N.J. at 113 (non-client litigant must prove the "primary purpose" of the attorney's challenged conduct was "improper" when pursuing a malicious use of process claim); Mayo, Lynch & Assocs., Inc. v. Pollack, 351 N.J. Super. 486, 497 (App. Div. 2002) (to bring a claim against a lawyer under New Jersey's civil RICO statute, State must allege that the legal advice provided by the lawyer "was so egregiously wrong that a jury could find that it surpassed negligence or recklessness.").



mens rea for conduct in furtherance of a criminal enterprise when a similarly purposeful intentionality standard—a conscious effort to further an improper purpose in litigation—is required in the civil context. Application of the principles and reasoning set forth in LoBiondo compels the legal conclusion that a purposeful criminal mens rea standard should apply when the context again is the delivery of legal services to a client.

To that end, NJSBA asks the Court to apply that heightened mens rea standard and require the State to allege and prove an attorney engaged in some conscious effort to further the criminal enterprise when bringing criminal conspiracy charges against an attorney in connection with the attorney’s delivery of legal services to a client. Allegations establishing only that an attorney was engaging in the good faith representation of their client are insufficient to sustain an indictment against dismissal. This mens rea pleading standard aligns with LoBiondo and is not unfamiliar for assessing criminal intent where context must be assessed with care. Indeed, the Criminal Code includes a “purposeful” culpability standard for application with criminal statutes and thus can serve to guide the search for an attorney’s alleged conscious effort to further a criminal endeavor when that must be identified and separated from the attorney’s performance of otherwise ordinary legal services expected in the good faith practice of law. See N.J.S.A. 2C:2-2(b)(1) (“a person acts purposely with respect to the nature of his conduct or a result thereof if

it is his conscious object to engage in conduct of that nature or to cause such a result”).

It is axiomatic that “every constituent element of the crime charged must be set forth in the indictment and not left to intendment.” State v. Algor, 26 N.J. Super. 527, 531 (App. Div. 1953) (citing State v. Bleichner, 11 N.J. Super. 542, 547 (App. Div. 1951)). In order to properly demonstrate, for example, criminal conspiratorial intent by an attorney who is providing legal services to a client, the attorney’s individual intent must be demonstrated. It cannot be presumed that the attorney’s services to a client cements the intent of the two, rendering the attorney’s personal intent indiscernible. LoBiondo, 199 N.J. at 109 (“the court must look to the motivation of the attorney, rather than to the motivation of the client” when evaluating claims against attorneys); see also RPC 1.2 (b). It is the State’s charging burden to show the requisite purpose by the attorney, and the heightened intentionality standard would ensure that the attorney-client relationship does not result in lawyers losing control over their self-determination of intent. Engagement as an attorney does not equate to loss of individual determination. The RPCs demand that attorneys act with no known knowledge of illegality, fraud, or criminality. So when an attorney is engaged in the good faith delivery of legal services to a client within those bounds, no indictment should issue without the State’s proof of some conscious effort by the attorney to further the criminal enterprise or action.

Any different mens rea proof requirement for such criminal conspiratorial activity by an attorney providing legal services to a client would represent an absurd and unlikely legislative intent to automatically indict lawyers of clients charged with conspiratorial conduct. That could not have been a reasonable intent by the Legislature. Indeed, viewed through that lens, it would approach encroachment of the regulation of the practice of law, which is constitutionally relegated to the Supreme Court. That construction is to be avoided.<sup>4</sup>

All reasoning supports that, as to criminal charges pursued against attorneys, the State should be required to allege that the attorney's conduct transgresses the good faith provision of legal services. Absent such a standard, the zealous representation of criminal defendants will be chilled because attorneys would be

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<sup>4</sup> As noted previously, the State Constitution provides that the State Supreme Court has the exclusive jurisdiction over the regulation of attorney conduct. NJ Const. art. VI, § 2, ¶ 3. If the State Supreme Court adopted an RPC and the Legislature enacted a statute that it would be a crime for an attorney to abide by that RPC, that would give rise to a violation of the separation of powers between the Legislative branch and the Judicial branch. It is well settled that in construing statutes it is assumed that the Legislature would not violate the Constitution. In re Commitment of W.Z., 173 N.J. 109, 126 (2002) (when interpreting statutes courts “assum[e] that the Legislature intended to act in a constitutional manner.” (quoting Right to Choose v. Byrne, 91 N.J. 287, 311, (1982))). Hence, in this case, the Court does not need to reach the constitutional separation of powers issue because it is plain that the Legislature intended for a higher mens rea to apply contextually where attorneys are charged with crimes when they engage in the good faith practice of law.

forced to operate under the threat of criminal liability for engaging in routine legal work.

**C. The law recognizes, in a variety of contexts, that attorneys must be treated differently than other litigants to advance the public policy goal of zealous representation.**

The law in New Jersey recognizes and adjusts to the need to assess attorney behavior under unique rules that take into account the role attorneys play for clients. It is not novel or unique to adjust for the attorney-client relationship for public policy reasons.

**1. Lawyers enjoy absolute privilege against civil liability for false and defamatory statements made during judicial proceedings.**

Lawyers enjoy an absolute privilege against civil liability for statements “made in the course of judicial proceedings before a court of justice” even if those statement are “defamatory and malicious.” Hawkins, 141 N.J. at 214 (quoting Fenning v. S.G. Holding Corp., 47 N.J. Super. 110 (App. Div. 1957)). “In New Jersey, the litigation privilege protects attorneys not only from defamation actions, but also from a host of other tort-related claims.” Loigman, 185 N.J. at 583; see also Middlesex Concrete Prods. & Excavating Corp. v. Carteret Indus. Ass’n, 68 N.J. Super. 85, 92 (App. Div. 1961) (holding litigation privilege bars tortious interference with contract claim).

This well-established privilege against liability is premised on public policy concerns. Indeed, attorneys must be “permitted to speak and write freely without the

restraint of fear of an ensuing defamation action, this sense of freedom being indispensable to the due administration of justice.” Hawkins, 141 N.J. at 214 (quoting Fenning, 47 N.J. Super at 135). “Such application of the privilege affords litigants and witnesses ‘the utmost freedom of access to the courts without fear of being harassed subsequently by derivative tort actions.’” Ibid. (quoting Silberg v. Anderson, 50 Cal. 3d 205, 213 (1990), as modified (Mar. 12, 1990)); see also Loigman, 185 N.J. at 580 (“[I]t is, on the whole, for the public interest, and best calculated to subserve the purposes of justice, to allow counsel full freedom of speech, in conducting the causes, and advocating and sustaining the rights, of their constituents; and this freedom of discussion ought not to be impaired by numerous and refined distinctions.” (quoting Hoar v. Wood, 44 Mass. 193, 197–98 (1841))).

The absolute privilege against civil liability afforded to attorneys for statements made in the course of judicial proceedings is a judicially enforced “trade-off” that “may protect the few unethical and negligent attorneys from a merited civil judgment and damages award,” but is nonetheless necessary to “ensure that the many honest and competent lawyers can perform their professional duties while furthering the administration of justice.” Loigman, 185 N.J. at 587. “That trade-off is the necessary price that must be paid for the proper functioning of our judicial system, a system that requires attorneys to vigorously and fearlessly represent their clients’ interests.” Ibid. It is a trade-off courts are willing to make because it is mitigated “by

the sanctions faced by wayward attorneys through our disciplinary system.” Ibid. (citing Butz v. Economou, 438 U.S. 478, 512 (1978) and Hawkins, 141 N.J. at 220–21).

2. The crime fraud exception to the Rules of Evidence serves an important role in balancing the public and private interests at stake in this matter.

New Jersey Rule of Evidence 504 establishes that communications made between a lawyer and client in the course of their legal relationship and in professional confidence are privileged. N.J.R.E. 504(1). However, the attorney-client privilege is waived where a communication is made “in the course of legal service sought or obtained in aid of the commission of a crime or fraud.” N.J.R.E. 504(2). The privilege will be lost if a communication is made in furtherance of a crime even if the lawyer was unaware of his client’s criminal or fraudulent intent. In re Selser, 15 N.J. 393, 412 (1954). Thus, by its operation, N.J.R.E. 504’s crime/fraud exception strips away the attorney-client privilege eliminating the shielding of otherwise normally protected communications and allowing for their use in criminal and civil proceedings.

RPC 1.6 requires an attorney to provide otherwise privileged information to appropriate authorities if an attorney reasonably believes that information learned in confidence through the attorney’s representation of a client will result in the client or another person committing a criminal, illegal, or fraudulent act that will result in

substantial bodily harm or substantial injury to the financial interest or property of another. See RPC 1.6(b). As with all RPCs, a violation of RPC 1.6 may result in the court imposing discipline on an attorney through sanctions or penalties. See RPC 8.4. But rendering the communication no longer protected does not equate to a basis to indict the attorney. Separate considerations must pertain to the discernment of requisite criminal intent by the attorney.

When the routine, good-faith provision of legal services is involved, the RPCs provide sufficient guardrails to discipline an attorney if the attorney fails to report information about potential criminal activity learned through the course of his representation to the proper authorities. An attorney's actions in the good faith practice of law do not bespeak criminal intent. To pursue an indictment against an attorney for action in connection with representation of a client, the State ought be required to demonstrate for the mens rea element that the attorney engaged in some conscious effort to further the criminal activity.

### **CONCLUSION**

For the reasons stated herein, the Court should apply a heightened mens rea standard for criminal conspiracy charges asserted against an attorney who is engaged in the good faith provision of legal services to a client. NJSBA urges such charges in an indictment must involve more than an attorney's good faith provision of legal

services and must demonstrate some conscious effort by the attorney to further the criminal enterprise.

Respectfully submitted,

New Jersey State Bar Association

By: *s/ Norberto A. Garcia*

Norberto A. Garcia, Esq.

President-Elect, New Jersey State Bar Association

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Dated: July 22, 2025