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NEW JERSEY STATE BAR ASSOCIATION

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June 26, 2020

Hon. Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Subj: Working Group on the Duty of Confidentiality and Wrongful Convictions
Hughes Justice Complex; P.O. Box 037
Trenton, New Jersey 08625-0037

Re: Comments on Report and Recommendations of
Working Group on the Duty of Confidentiality and Wrongful Convictions
(Proposed Amendments to RPC 1.6)

Dear Judge Grant:

Thank you for the opportunity to provide comments in connection with the report and recommendations of the Working Group on the Duty of Confidentiality and Wrongful Convictions. The New Jersey State Bar Association (NJSBA) commends the members of the Working Group for their thoughtful analysis of the difficult issues surrounding the potential disclosure of confidential information concerning a wrongful conviction. The inclusion of a strong minority position in the report illustrates the tensions between the competing interests involved in the discussion. After careful review and debate among our members, the NJSBA recommends that the Court follow the recommendation of the minority of the Working Group and not amend Rule of Professional Conduct (RPC) 1.6 to include an exception to require lawyers to disclose otherwise confidential information that demonstrates that an innocent person has been wrongly incarcerated.

While the NJSBA believes the goals of the majority's recommendation are laudable, we believe the attorney-client privilege must be sacrosanct. Further, we do not believe inclusion of the exception in the rule is likely to lead to the desired result of freeing a wrongfully convicted individual. It will, however, certainly result in eroding the lawyer-client privilege, diminishing the right to effective counsel, eviscerating the trust between lawyer and client, and chilling candid and honest communications. As summarized by the minority, "The danger to the lawyer client relationship is too great and the utility of the information likely to be obtained is too small."

The NJSBA agrees with the minority that the current rules appropriately preserve the sanctity of the lawyer-client relationship while allowing defense counsel to work with their client to bring forward information by consent, perhaps in connection with appropriate safeguards for the client, depending on the specific facts and circumstances.

For these reasons, the NJSBA urges that the proposed amendments to RPC 1.6 not be adopted and that no new exceptions to the attorney-client privilege be added.

Respectfully,

A handwritten signature in black ink, reading "Kimberly A. Yonta". The signature is fluid and cursive, with the first name "Kimberly" being more prominent and the last name "Yonta" following in a similar style.

Kimberly A. Yonta, Esq.
President

cc: Domenick A. Carmagnola, Esq., NJSBA President-Elect
Angela C. Scheck, NJSBA Executive Director