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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

HANY A. MAWLA
JUDGE



216 HADDON AVENUE
WESTMONT, NEW JERSEY 08108
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June 26, 2020

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Attention: Comments on Report of the Working Group on the Duty of Confidentiality and
Wrongful Convictions
Hughes Justice Complex
P.O. Box 037
Trenton, NJ 08625-0037
Via email Comments.Mailbox@njcourts.gov

Re: Proposed Changes to Rule of Professional Conduct 1.6

Dear Judge Grant:

The Supreme Court Committee on Diversity, Inclusion, and Community Engagement ("SCC-DI&CE") Executive Board, in the Committee's advisory role to the Court, writes in response to the posting of the *Report and Recommendations of the Working Group on the Duty of Confidentiality and Wrongful Convictions* for public comment.¹

The SCC-DI&CE values the Working Group's careful consideration of the critical issues of the duty of confidentiality and wrongful convictions. We write to endorse the proposed change to the Rules of Professional Conduct (RPCs), specifically RPC 1.6 because it continues the Court's criminal justice and juvenile justice reform efforts in assuring that persons of color and the poor are not disproportionately affected by unfair criminal convictions and juvenile adjudications.

We support the RPC revision because when wrongful convictions are permitted to stand it undermines the public's confidence in the judicial system not only from the point of view of the wrongfully convicted defendant, but also the victims and their families who are denied justice. Wrongful convictions perpetuate a false narrative and thus provide a false sense of closure to those injured by the crime. Moreover, such outcomes undermine the Court's access and fairness initiatives by sending the wrong message that the justice system does not serve everyone. Resolving wrongful convictions strengthens the justice system and improves the public trust in the courts.

¹ The Office of the Attorney General and the Office of the Public Defender, both of whom are ex officio members of the SCC-DI&CE and have designees serving on the Committee, joined in the Minority Report of the Working Group. Respectful of their stated positions, this commentary submitted by the SCC-DI&CE Executive Board does not represent the views of either the Attorney General or the Public Defender. The full text of the minority report, which details their shared position, is available online at <https://njcourts.gov/courts/supreme/reports.html>.

As the majority notes, lawyers, as officers of the court, must not be complicit in permitting a wrongful conviction to stand and must, in discharging their professional responsibility avoid participation in perpetuating wrongs that have historically inured to the detriment of communities of color and the poor. We do not discount the very valid points raised by the minority, namely, access to representation and the necessary trust between attorney and client that is essential to defending a criminal defendant. However, the potential of the proposed RPC to combat systemic bias against racial and ethnic minorities outweighs such concerns. Indeed, the RPCs are not absolute. RPC 1.6 already includes specific exceptions to attorney-client privilege and conditions under which the privilege may be pierced, and in fact must be pierced by an attorney. The proposed RPC is consistent with the exceptions enumerated in RPC 1.6.

Lastly, the practice of conviction integrity reviews, addresses those cases in which the State fails to provide exculpatory evidence to the defense as part of discovery. The proposal of the Working Group to modify RPC 1.6 affirms that all justice system stakeholders have an affirmative obligation in the face of a wrongful conviction and does not disproportionately place the burden of ensuring fair convictions on the State alone.

The SCC-DI&CE Executive Board thanks the Court for the opportunity to comment on the proposed change to the RPCs.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Hany A. Mawla', with a stylized flourish at the end.

Hany A. Mawla, J.A.D.

Chair, Supreme Court Committee on Diversity, Inclusion, and Community Engagement

cc: Steven D. Bonville, Chief of Staff
Executive Board, Supreme Court Committee on Diversity, Inclusion, and Community
Engagement
Yolande P. Marlow, Ph.D., Diversity, Inclusion, and Community Engagement Program
Director
Lisa R. Burke, Diversity, Inclusion, and Community Engagement Program Coordinator